

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

VIA ELECTRONIC MAIL TO: mark.hewett@nngco.com; thomas.correll@nngco.com;
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February 6, 2024

Mr. Mark Hewett
President & CEO
Northern Natural Gas Company
1111 S. 103rd Street
Omaha, NE 68124

CPF 3-2024-012-NOPV

Dear Mr. Hewett:

From April 10 through May 4, 2023, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), along with representatives from the Michigan Public Service Commission, Minnesota Office of Pipeline Safety, and the Iowa Utility Board acting as Interstate Agents, pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected Northern Natural Gas Company's (NNG) procedures and records for the new gas integrity rule¹ in Omaha, Nebraska.

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

¹ Docket No. PHMSA-2011-0023; Amdt. Nos. 191-26; 192-125 Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments

1. § 192.5 Class locations.

(a)

(b) Except as provided in paragraph (c) of this section, pipeline locations are classified as follows:

(1)

(3) A Class 3 location is:

(i)

(ii) An area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

NNG did not properly identify several locations where a building or well defined outside area was occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period, per § 192.5(b)(3). Specifically, NNG's Engineering Standard (ES) 0060, referenced within NNG's procedure 80.101 – Class Locations, stated that identified sites for class location must have people at the location for at least 4 hours in a 24-hour period. § 192.5(b)(3) does not specify a length of time the location must be occupied during the day. As a result, NNG misidentified multiple sites. The misidentified sites discovered during PHMSA's inspection were as follows:

<u>Location</u>	<u>Coordinates</u>	<u>Additional Note:</u>
• Sartell, MN	Lat 45.603886; Long -94.232211	First Methodist Church
• Houghton, MI	Lat 47.110667; Long -88.558172	MI Technical College
• Mankato, MN	Lat 44.185483; Long -93.935983	FedEx Ground Building

Shortly after the inspection, NNG indicated that they re-visited these locations and verified that these areas did meet the occupation requirements in accordance with § 192.5(b)(3).

Additionally, the FedEx in Mankato, Minnesota, location was an identified site, but NNG incorrectly classed the relevant section of pipe as a Class 2 area. NNG reclassified the location to a Class 3 after the inspection.

By failing to properly identify these three locations as Class 3 locations, NNG did not meet the requirements of § 192.5(b)(3).

2. § 192.605 Procedural manual for operations, maintenance, and emergencies.

(a) **General.** Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where

operations and maintenance activities are conducted.

NNG did not follow its manual of written procedures in accordance with § 192.605(a). Specifically, NNG did not follow procedure 140.101, entitled Identification of High Consequence Areas (HCA) and Moderate Consequence Areas (MCA), section 3.11.3. Section 3.11.3 stated that “[f]or MCAs, Class 3 and 4 locations, the baseline assessment plan is documented in operating procedure 140.401b, Baseline Assessment Plan Outside of HCAs. The initial MCA analysis on pipe segments with an MAOP greater than or equal to 30% SMYS must be completed no later than July 1, 2021.”

During PHMSA’s inspection, PHMSA inspectors reviewed NNG’s pipeline system for MCAs and determined that four MCAs were missed. As a result, NNG did not complete an initial MCA analysis for the baseline assessment plan for the four missed MCAs. The missed MCAs discovered during PHMSA’s inspection were as follows:

<u>Location</u>	<u>Coordinates</u>
• Sauk Rapids, MN	Lat 45.597242, Long -94.126919
• Sartell, MN	Lat 45.598406, Long -94.23635
• Sartell, MN	Lat 45.619344, Long -94.188419
• Sartell, MN	Lat 45.601144, Long 094.234033

3. § 192.710 Transmission lines: Assessments outside of high consequence areas.

(a)

(b) General –

(1) Initial assessment. An operator must perform initial assessments in accordance with this section based on a risk-based prioritization schedule and complete initial assessment for all applicable pipeline segments no later than July 3, 2034, or as soon as practicable but not to exceed 10 years after the pipeline segment first meets the conditions of § 192.710(a) (e.g., due to a change in class location or the area becomes a moderate consequence area), whichever is later.

NNG’s MCA Baseline Assessment schedule did not adequately reflect NNG’s evaluated risk ranking for assessments of the MCA segments. Specifically, NNG’s baseline assessment schedule for MCAs had multiple instances where NNG scheduled an MCA segment with a relatively higher risk per the risk model to be assessed after an MCA segment with a relatively lower risk. For example, MCA 21-M470B-01 was risked ranked in 2021 as a 7 and scheduled to be assessed in 2027 while MCA 21-M471B-12 was risked ranked in 2021 as a 13, but was scheduled to be baseline assessed in 2025. Another example is MCA 21-M440B-05, which was risk ranked in 2021 as a 10 and scheduled to be assessed in 2028; while MCA 21-M500B-04 was risk ranked in 2021 as a 125 and scheduled to be assessed in 2025.

During PHMSA’s inspection, NNG personnel indicated to PHMSA inspectors that the baseline assessment scheduling was largely created to match NNG’s existing scheduling of the line segments within the integrity management program; however, NNG did not document this reasoning. NNG should be documenting every decision made with regards

to the integrity program. Additionally, FAQ 66 for the Gas Transmission Rule provides more guidance on the expectations of an operator when the assessment schedule does not match the risk rank prioritization schedule.

By creating an assessment schedule that did not match its determination of risk rank prioritization, NNG did not meet the requirements of § 192.710(b).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$266,015 per violation per day the violation persists, up to a maximum of \$2,660,135 for a related series of violations. For violation occurring on or after January 6, 2023, and before December 28, 2023, the maximum penalty may not exceed \$257,664 per violation per day the violation persists, up to a maximum of \$2,576,627 for a related series of violations. For violation occurring on or after March 21, 2022 and before January 6, 2023, the maximum penalty may not exceed \$239,142 per violation per day the violation persists, up to a maximum of \$2,391,412 for a related series of violations. For violation occurring on or after May 3, 2021 and before March 21, 2022, the maximum penalty may not exceed \$225,134 per violation per day the violation persists, up to a maximum of \$2,251,334 for a related series of violations. For violation occurring on or after January 11, 2021 and before May 3, 2021, the maximum penalty may not exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679.

We have reviewed the circumstances and supporting documentation involved for the above probable violation and recommend that you be preliminarily assessed a civil penalty of \$ 68,800 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$ 68,800

Proposed Compliance Order

With respect to Items 1 and 2 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to NNG. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Warning Item

With respect to Item 3, 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 promptly correct this item. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Enforcement Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be 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).

Following your receipt of this Notice, you have 30 days to respond as described in the enclosed *Response Options*. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. The Region Director may extend the period for responding upon a written request timely submitted demonstrating good cause for an extension.

In your correspondence on this matter, please refer to **CPF 3-2024-012-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

cc: Laura Demman, President, Laura.Demman@nngco.com
Brian Mundt, VP Operations, Brian.Mundt@nngco.com
Thomas Correll (thomas.correll@nngco.com)
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Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Enforcement Proceedings

PROPOSED COMPLIANCE ORDER

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

- A. In regard to Item 1 of the Notice pertaining to the missed identified sites for Class 3 locations, NNG must do the following:
 - Revise Procedure 80.101 and Engineering Standard 0060 to remove the 4 hour time limit and submit a copy to the Director Central Region within **90 days** of the date of the Final Order.
 - Train personnel on the new procedure and provide the training records to the Director Central Region upon completion of the revision of the procedure.
 - Implement the new procedure and provide quarterly reports to the Director, Central Region, PHMSA. The revised evaluation of the system must be completed within **360 days** of the receipt of the Final Order. Any requests for an extension must be made a minimum of **30 days** in advance.
- B. In regard to Item 2 of the Notice pertaining to missed Moderate Consequence Areas (MCAs), NNG must review all processes that are associated with the identification of MCAs to determine how existing structure and roadway MCAs were not previously identified and provide documentation of the review to the Director, Central Region within **90 days** of issuance of the Final Order. Once this review is complete, NNG must ensure all MCAs and other pipe segments subject to § 192.710 are identified and submit the final results to the Director, Central Region within **180 days** of issuance of the Final Order.
- C. It is requested that Northern Natural Gas Company maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory A Ochs, Director, Central Region, 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.