

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

VIA ELECTRONIC MAIL TO: mark.hewett@nngco.com; thomas.correll@nngco.com;
keith.good@nngco.com; john.gormley@nngco.com

November 14, 2024

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

CPF 3-2024-069-NOPV

Dear Mr. Hewett:

From March 28 to October 2, 2023, 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 Northern Natural Gas Company's (NNG) natural gas pipeline system in Kansas and Nebraska.

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

1. **§ 192.605 Procedural manual for operations, maintenance, and emergencies.**
 - (a)
 - (c) *Abnormal operation.* For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:
 - (1)

(4) Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

NNG's manual of written procedures failed to include procedures for periodically reviewing the response of its personnel, as required by § 192.605(c)(4). Specifically, PHMSA found that NNG's procedures did not contain adequate detail for recording and documenting reviews of personnel responses to abnormal operations. From a review of NNG's processes and records for 2021, 2022, and 2023, PHMSA found that NNG could not demonstrate that it had completed reviews of personnel responses to abnormal operations compliant with § 192.605(c)(4).

NNG Procedure 080.413, "Abnormal Operation," section 5.12, required NNG to annually evaluate the response of the personnel involved. However, the procedure did not prescribe how to document the review. Consequently, NNG did not generate any records of its personnel responses being evaluated. NNG explained to PHMSA during the inspection that the process it used involved the review of Enterprise Action Tracking System (EATS) reports of each abnormal operations event to ensure the event was resolved. Any review of the responses of operator personnel to determine the effectiveness of the procedures for controlling abnormal operation and taking corrective action were not being documented. During the inspection, PHMSA confirmed that records contained very limited information, such as a list of dates of the review and the title of the procedure. However, NNG's records failed to contain any information about how the procedure was reviewed, or how it was compared to personnel actions. Accordingly, NNG failed to have a procedure prescribing how to document an effectiveness review of its maintenance and normal operation procedures, in accordance with § 192.605(c)(4).

Following the inspection, NNG acknowledged PHMSA's preliminary findings, and stated that its pipeline safety department would partner with field operations to improve the overall procedure effectiveness and that it would also retain an independent third-party consultant to conduct a supplemental audit of the procedures.

2. § 192.705 Transmission lines: Patrolling.

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

NNG failed to maintain the right-of-way (ROW) at an appropriate level for the type of patrols that were being performed, per the requirements of § 192.705(a). Specifically, NNG solely conducted aerial patrols at locations where surface conditions (e.g., trees and vegetation) did not allow for adequate observation of the ROW.

During the inspection, PHMSA reviewed NNG's patrolling records for 2020 through 2023 and confirmed via interviews with NNG personnel that aerial patrol was the only method utilized at the following locations where PHMSA found, from on-site inspection, that vegetation and/or tree canopy cover prevented observation of the ROW from the air. These locations include: (1) MP 5.98 Line 660B, where there was 225 to 250 feet of overgrown vegetation near 120th road; (2) MP 7.85 line 660B, where there was approximately 750 feet of overgrown vegetation near 130th

road; and (3) MP 40 line 670B and 670C, where there was approximately 450 to 500 feet of overgrown vegetation on two line segments southwest of the Macksville station.

Patrolling of ROWs is essential to help identify potential problems from third-party activities along the pipeline and observing for indications of leaks. The surface conditions of the ROW and adjacent areas cannot be adequately inspected by aerial patrolling when those areas are obstructed by an overhanging tree canopy. No other methods of patrolling were conducted in these locations at the time of the field inspection. Therefore, by failing to adequately maintain its ROWs, NNG failed to follow § 192.705(a).

As a result of PHMSA's findings, NNG has since ground patrolled these locations in July 2023 with no further issues observed.

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. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violations and recommend that you be preliminarily assessed a civil penalty of \$ 39,100 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$39,100

Proposed Compliance Order

With respect to Item 1 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.

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 3-2024-069-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

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

cc: Thomas Correll, Director, Pipeline Safety, Northern Natural Gas,
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John Gormley, Sr. Corrosion Specialist, Northern Natural Gas,
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Keith Good, Pipeline Safety Specialist, Northern Natural Gas,
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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. With regard to Item 1 of the Notice, pertaining to NNG's failure to have a detailed procedure for reviewing the effectiveness of its procedures for handling abnormal operation, NNG must provide a detailed written procedure to address the periodic review of work done and to determine the effectiveness of its abnormal operating procedures. The revised procedure must prescribe the necessary frequency and documentation required for a complete review of any abnormal operating procedures performed within a reasonable time period. Respondent must submit the written program to the Director, for review and approval. Following the Director's approval of the procedure, Respondent must conduct and provide to the Director a record of an effectiveness review of its abnormal operating procedures using the amended procedure within **90** days of receipt of the Final Order.
- B. It is requested (not mandated) that NNG 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.