

**NOTICE OF PROBABLE VIOLATION
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 3-2024-011-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 class location in Omaha, Nebraska.

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

1. § 192.5 Class locations.

(a)

(c) The length of Class locations 2, 3, and 4 may be adjusted as follows:

(1)

(2) When a cluster of buildings intended for human occupancy requires a Class 2 or 3 location, the class location ends 220 yards (200 meters) from the nearest building in the cluster.

NNG's determination of the boundaries for a Class 2 or 3 area was not consistent with the class location criteria as required by § 192.5(c)(2). Specifically, NNG utilized clustering to reduce the size of a Class 2 or 3 area, which is allowed by the regulations. However, NNG's procedure 80.101 for class location determination, which cross-referenced NNG's Engineering Standard (ES) 0060, allowed NNG to utilize three (3) buildings as the minimum size for the cluster. This methodology allowed NNG to reduce the class location of areas with occupied buildings that were originally classed to a higher class location by the original sliding mile analysis. § 192.5(c)(2) indicates that the *length* of Class locations 2, 3, and 4 can be adjusted, but operators cannot downgrade the actual class location. As a result, the true length of the Class 2 or 3 location may not be defined correctly because those three or less buildings would have extended the length of the Class 2 or 3 location.

During PHMSA's inspection, inspectors reviewed NNG's class locations in random areas of the NNG pipeline system and identified two locations (three examples) where clustering was used to reduce the length of a Class 3 area, because there were less than three occupied buildings. The locations identified are as follows:

- Line M560B-05 Lat/Long: 42.4569639, -96.3017361
- Line MNB87702-08 Lat/Long: 45.2634194, -93.3974167
- Line 179MNB87701 (Same location as above; parallel line)

In the above examples, NNG's clustering methodology allowed the class locations in all examples to be derated from Class 3 to Class 1. In looking at the Class 1 area directly adjacent to the Class 3 areas, there were occupied structures (less than three) where the class reduction occurred. All the structures were within the original sliding mile for a Class 3. NNG's ES 0060, referenced from procedure 80.101, allowed the location of these buildings to be downgraded from a Class 3 to a Class 1 area, thereby reducing the true length of the Class 3 area.

By using a methodology that allowed three buildings to be clustered, NNG downgraded multiple Class 3 locations, in violation of § 192.5(c)(2).

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. exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

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 Northern Natural Gas Company. 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 3-2024-011-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: David Geck (david.geck@nngco.com)
Thomas Correll (thomas.correll@nngco.com)
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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. In regard to Item 1 of the Notice pertaining to the incorrect application of class location clustering, NNG must do the following:
 - Revise ES 0060, which is referenced from Procedure 80.101, to ensure that any class location with occupied structures established from the original sliding mile analysis is not derated to a lower class location for any reason.
 - Submit the revision within **90 days** of receipt of the Final Order.
 - Train NNG personnel on the new procedure and submit the training records within **150 days** of receipt of the Final Order.
 - Implement and complete the new procedure system wide to re-evaluate the lengths of the existing Class 2 and 3 locations upon completion of the revised procedures.
 - Provide PHMSA a quarterly update on the status of the re-evaluation.
 - 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. It is requested 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.