



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety Administration**
Office of Chief Counsel

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

July 17, 2012

Mr. Dan Britton
President and CEO
Fairbanks Natural Gas, LLC
3408 International Way
Fairbanks, Alaska 99701

**Re: In the Matter of Fairbanks Natural Gas, LLC
Special Permit No. RSPA-97-2346**

Dear Mr. Britton:

I am pleased to enclose a copy of the fully executed Consent Agreement and Order dated July 17, 2012, regarding the above-referenced Special Permit.

Thank you and your counsel for your cooperation in getting this matter resolved. Should you have any questions or concerns regarding the implementation of this agreement, please feel free to contact me or the Alaska Region Office.

Sincerely,

Bryn Karaus,
Attorney-Advisor
Office of Chief Counsel

Enclosure

Cc: Mr. Mark Figura, Counsel for Fairbanks Natural Gas, LLC
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Chris Hoidal, Director, Western Region, OPS
Mr. Dennis Hinnah, Deputy Director, Western Region, OPS

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

In the Matter of

**Fairbanks Natural Gas, LLC,
Successor to Northern Eclipse, Inc.,**

Respondent.

Docket No. RSPA-97-2346

CONSENT AGREEMENT AND ORDER

In accordance with 49 U.S.C. § 60118(c), the Research and Special Programs Administration (RSPA)¹ issued a waiver (now referred to as a “special permit”) to Northern Eclipse, Inc., on July 16, 1997, for a Gas Treating and Liquefaction Facility located 20 miles north of Anchorage, Alaska (GTL Facility).² At the time of the issuance of the waiver, Northern Eclipse disputed the applicability of 49 C.F.R. Part 193 to the LNG plant, but requested a waiver to avoid the dispute. The waiver request was based on certain unusual features of the proposed facility, including its remote location, lack of a storage tank, and a skid-mounted transportable liquefaction unit. The GTL Facility was sold to Fairbanks Natural Gas, LLC (FNG) in 2006. FNG is the current owner and operator of the facility. The waiver, referred to as RSPA-97-2346 (Special Permit), waived the operator’s obligation to comply with 49 C.F.R. Part 193 and imposed alternative safety requirements with respect to the GTL Facility.

On November 16, 2010, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), pursuant to Chapter 601 of 49 United States Code, inspected the GTL Facility to assess FNG’s compliance with the Special Permit. After the inspection, PHMSA notified FNG that a number of conditions had changed since issuance of the Special Permit in 1997 and that FNG needed to bring the GTL Facility into compliance with 49 C.F.R. Part 193. On May 5, 2011, FNG supplied PHMSA with a list of planned improvements to bring the GTL Facility into compliance. On November 29, 2011, representatives of PHMSA inspected the GTL

¹ The Research and Special Programs Administration is a predecessor agency. Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) was created to further the highest degree of safety in pipeline transportation and hazardous materials transportation. See section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also 70 Fed. Reg. 8299 (February 18, 2005), re delegating the pipeline safety functions to the Administrator of PHMSA.

² “Pipeline Safety: Liquefied Natural Gas Facilities Grant of Waiver; Northern Eclipse, Inc.,” Docket No. RSPA-97-2346, 62 Fed. Reg. 38357, 38358 (July 14, 1997).

Facility again and asserted that very few of the planned upgrades had been implemented.

As a result of these inspections, the Associate Administrator, Office of Pipeline Safety (OPS), issued to Respondent, by letter dated December 30, 2011, an Order to Show Cause why the Special Permit should not be revoked.³ In accordance with 49 C.F.R. § 190.341(h)(1)(ii) and (v), PHMSA proposed to revoke the Special Permit based upon a material change in circumstances and a failure to comply with a material term or condition of the Special Permit, as more fully described in the Order to Show Cause.⁴

FNG responded to the Order to Show Cause by letter dated January 12, 2012 (Response). In its Response, the company did not object to the revocation of the Special Permit and did not show cause why the Special Permit should not be revoked. FNG acknowledged that circumstances had changed since the Special Permit was issued and that it would be appropriate for the plant to be regulated under Part 193.

In its Response, FNG requested that the revocation of the Special Permit be effective on December 31, 2012, to allow plant improvements and construction activities to be made during the summer and fall. FNG stated that Alaska's weather affects the scheduling of these improvements and that interruptions resulting from construction activities would reduce the supply of LNG to Fairbanks during the winter months, when the GTL Facility operates at capacity.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement (Agreement) is the most appropriate means of terminating the Special Permit, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of Respondent and PHMSA (Parties), the Parties agree as follows:

I. General Provisions

1. FNG acknowledges, as operator of the GTL Facility, that FNG and the GTL Facility 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. FNG further agrees to complete improvements to the GTL Facility to make it compliant with 49 C.F.R. Part 193. FNG reserves the right to dispute the applicability of Part 193 to the GTL Facility in any future proceeding unrelated to this Consent Agreement. For purposes of this Agreement, FNG acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Order to Show Cause 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. PHMSA hereby revokes the Special Permit, effective December 31, 2012. FNG consents to such revocation and the issuance of this Consent Agreement and Order, and hereby waives any further procedural requirements with respect to its issuance. FNG waives all rights to

³ Order to Show Cause, Docket No. RSPA-97-2346.

⁴ Order to Show Cause, at 2-3.

contest the adequacy of notice, or the validity of this Agreement, including all rights to administrative or judicial hearings or appeals. FNG agrees that it will take the actions required to bring the GTL Facility into compliance with Part 193 by December 31, 2012.

3. FNG agrees to complete the actions specified in Section II of this Agreement (Work to be Performed). This Agreement does not constitute a finding of violation of any Federal law, rule, regulation or requirement and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault or liability, except in a proceeding to enforce the provisions of this Agreement.

4. This Agreement shall apply to and be binding upon PHMSA and its successors and upon FNG, its officers, directors, and employees, and its successors, assigns, owners, or other entities or persons otherwise bound by law.

5. All references to "Director" in this Consent Agreement refer to the persons named below. Approval from either of the persons named below will satisfy any requirement for approval by the Director. Information, reports, and notifications required by this Agreement must be submitted to the following persons:

- a. Director, Western Region, PHMSA Office of Pipeline Safety, 12300 West Dakota Avenue, Suite 110, Lakewood, CO 80228; and
- b. Deputy Director, Western Region, PHMSA Office of Pipeline Safety, 188 West Northern Lights Blvd., Suite 520, Anchorage, AK 99503.

6. For all transfers of ownership interests or operating responsibility of the GTL Facility prior to termination of this agreement as defined in Section VI below, FNG must provide a copy of this 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.

7. Nothing in this Agreement affects or relieves FNG 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 its authority to bring any enforcement action against FNG pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law. This specifically includes the right of the Associate Administrator for Pipeline Safety, PHMSA, to issue a Corrective Action Order pursuant to 49 C.F.R. § 190.233 if he finds that any pipeline facility operated by FNG is or may be hazardous to life, property or the environment.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to FNG's pipeline systems. FNG remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits. This includes all provisions of 49 C.F.R. Part 193, except as specifically provided by this Agreement.

9. This Agreement does not create rights in, or grant any cause of action to, any third person not a party to this Agreement. The U.S. Department of Transportation (DOT) is not liable for any injuries or damages to persons or property arising from acts or omissions of FNG or its officers, employees, or agents carrying out the work required by this Agreement. FNG agrees to indemnify and hold harmless DOT, its agencies, officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of FNG or its contractors in carrying out the work required by this Agreement.

II. Work to be Performed

10. FNG will complete the Work to be Performed described in Attachment A by the deadlines specified.

11. FNG will bring the GTL Facility into full compliance with 49 C.F.R. Part 193 by December 31, 2012.

12. FNG will hire a third-party LNG facility safety expert, approved by the Director, to perform a final inspection of the improvements and Respondent's compliance with 49 C.F.R. Part 193. FNG must provide the final inspection report to PHMSA by December 31, 2012.

13. The Director may grant an extension of time for completion of any of the work to be performed upon a written request timely submitted demonstrating good cause for an extension.

III. Enforcement

14. 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, if PHMSA determines that Respondent is in violation of the terms of this Agreement. The Schedule of Work to be Performed in Attachment A is part of this Agreement.

IV. Record Keeping and Information Disclosure

15. FNG agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, FNG may assert a claim of business confidentiality or other protections 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. Any claim of confidentiality must be marked in writing on each page, and must include a statement specifying the grounds for each claim of confidentiality. PHMSA will determine release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

V. Entire Agreement; Modification

16. This 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.

17. 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.

VI. Termination

18. This Agreement will terminate upon the completion of all terms set forth in Section II above, as determined by the Director. FNG may request written confirmation from PHMSA when this Agreement is terminated. Nothing in this Agreement prevents FNG from completing any of the obligations earlier than the deadlines provided for herein.


VII. Ratification

19. 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.

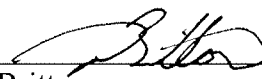
20. The Parties hereby agree to all conditions and terms of this Agreement:

For PHMSA:

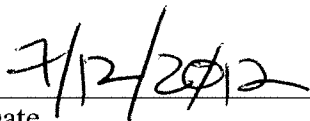
For Respondent:



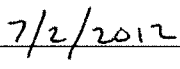
Jeff Wiese
Associate Administrator
Office of Pipeline Safety
PHMSA



Dan Britton
President and CEO
Fairbanks Natural Gas, LLC



Date



Date

Attachment A
Schedule of Work to Be Performed on the GTL Facility

	49 CFR Part 193 Improvements	Completion Date
1	193.2057 Thermal radiation exclusion zone will be in accordance with Part 193.	June 30, 2012
2	193.2059 Flammable vapor-gas dispersion exclusion zone will be in accordance with Part 193.	June 30, 2012
3	193.2155 Install impoundment per requirements of Part 193.	August 31, 2012
4	193.2441 Control Center improvements.	August 31, 2012
5	193.2445 Sources of Power Install gas/diesel generator and associated uninterruptible power supply for emergency and security lighting, warning system, control building and computers, emergency shutdown controls, means of communication, firefighting systems, and any other device for safe startup and safe shutdown.	August 31, 2012
6	193.2507 Monitoring Operations Install monitoring components to include fire and gas detectors, warning alarms, and gas, temperature, pressure, vacuum, and flow alarms. Detection will be worked into Programmable Logic Controller, warning, and emergency shutdown systems. Locations of detectors will be in compliance with Part 193 and NFPA 59A.	August 31, 2012
7	193.2625 Corrosion Control Will include atmospheric corrosion control on all exposed steel piping and coating and cathodic protection on any buried piping, in accordance with Part 193.	September 30, 2012
8	193.2911 Security Install additional security lighting per requirements of Part 193.	September 30, 2012
9	193.2441 Control Center Program remote actuated and automatic shutdown control systems to be operable from plant computer.	August 31, 2012
10	Revise manual shutdown device to be automatic shutdown and to be programmed for certain alarm inputs to be determined. Will install manual shutdown device near transfer area.	August 31, 2012
11	Install automatic emergency shutdown system. Automatic shutdown shall cut power to compressors, cascade unit, as well as close main gas feed valve.	August 31, 2012
12	Install warning lights and audible alarms throughout plant per requirements of NFPA 59A and Part 193.	August 31, 2012
13	193.2445 Sources of power Natural Gas fired backup generator shall be located apart from or be protected from other LNG facilities so that it is operational during a controllable emergency.	July 31, 2012

Attachment A
Schedule of Work to Be Performed on the GTL Facility

	Improvements relating to NFPA 59A, 2001 Edition	Completion Date
14	Plant Site Provisions – In accordance with the requirements of Part 193 and NFPA 59A Paragraphs 2.1, 2.2, and 10.8, install retention of spilled flammable liquids and refrigerants, including but not limited to: <ul style="list-style-type: none"> • LNG in trailers and process contain 10 minute design spill • Earthen swale north to impoundment (see Item #3) • Containment/housing of used/unused equipment oil • Containment of diesel used for yard equipment 	July 31, 2012
18	Facilities transferring LNG during the night shall have lighting at the transfer area in accordance with the requirements of NFPA 59A Paragraph 8.8.2.	August 31, 2012
19	Tank vehicle loading facility improvements will be completed in accordance with the requirements of NFPA 59A Paragraph 10.15.3.6.	July 31, 2012
20	Fire and Leak Detection and visual and audible alarms will be installed in accordance with the requirements of NFPA 59A Paragraph 9.3.	August 31, 2012
21	Fire Protection Water Systems will be designed and installed in accordance with the requirements of NFPA 59A Paragraph 9.4.	August 31, 2012
22	Fire protection improvements will be completed in accordance with the requirements of Part 193 and NFPA 59A Paragraph 9.1.2.	September 30, 2012
23	Security improvements will be completed in accordance with the requirements of NFPA 59A Paragraph 9.8.	August 31, 2012