

**DEC 29 2011**

Mr. Todd Denton  
Vice President Pipelines & Terminal Operations  
NuStar Pipeline Operating Partnership, L.P.  
2330 N. Loop 1604 West  
San Antonio, TX 78248

**Re: CPF No. 3-2011-5005**

Dear Mr. Denton:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a reduced civil penalty of \$101,200, and specifies actions that need to be taken by NuStar Pipeline Operating Partnership, L.P. to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. David Barrett, Director, Central Region, OPS  
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED [71791000164202982016]**

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

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<b>In the Matter of</b>	)	
	)	
<b>NuStar Pipeline Operating</b>	)	<b>CPF No. 3-2011-5005</b>
<b>Partnership, L.P.,</b>	)	
	)	
<b>Respondent.</b>	)	
_____	)	

**FINAL ORDER**

Between April 5-9, 2010, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities and records of NuStar Pipeline Operating Partnership, L.P. in Wichita, Kansas. NuStar Pipeline Operating Partnership, L.P. (NuStar or Respondent) is a subsidiary of NuStar Energy, L.P., which owns and operates 5,605 miles of refined product pipelines, 2,000 miles of anhydrous ammonia pipelines, and 812 miles of crude oil pipelines.<sup>1</sup>

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 21, 2011, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that NuStar had violated 49 C.F.R. §§ 195.50, 195.412, 195.573 and 195.404 and assessing a civil penalty of \$112,000 for the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning item required no further action, but warned the operator to correct the probable violation.

NuStar responded to the Notice by letter dated May 20, 2011 (Response). The company contested the allegations of violation, provided an explanation of its actions, and requested that the proposed civil penalty be reduced. Respondent did not request a hearing and therefore has waived its right to one.

**FINDINGS OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 195.50, as follows:

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<sup>1</sup> See <http://www.nustarenergy.com/COMPANY/Pages/default.aspx> (last accessed November 7, 2011).

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.50, which states in relevant part:

**§ 195.50 -- Reporting accidents.**

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following...

(b) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:

- (1) Not otherwise reportable under this section
- (2) Not one described in § 195.52(a)(4);
- (3) Confined to company property or pipeline right-of-way; and
- (4) Cleaned up promptly...

The Notice alleged that Respondent violated 49 C.F.R. § 195.50(b) by failing to file an accident report for three hazardous liquid releases that occurred between 2007-2010. Section 195.50 requires an operator to file a report for all releases of 5 gallons or more unless the spill meets the exception listed in § 195.50(b). On December 1, 2007, NuStar experienced a release of 50 gallons at its Geneva Station during a tank switching operation. The second release occurred on October 6, 2009 at the Elm Creek Pump station in which a sump overflowed releasing 89 gallons of fuel oil. The third release occurred on January 22, 2010 at the El Dorado Station during the start up of the mainline pump, resulting in a release of 50 gallons. OPS argued in the Notice that all three releases occurred during pipeline system operations and therefore should have been reported.

*Response*

NuStar argued that each of the three spills met the exception listed under § 195.50(b) since each release resulted from pipeline maintenance activity and was less than 5 barrels (210 gallons). In support of this argument, NuStar filed a statement summarizing the three spills and relied on the relevant rulemaking documents establishing these exceptions.

With regard to the first spill, NuStar argued that it occurred during a maintenance activity on the pipeline manifold area which involved tying in all block and bleed valves to a common header intended to carry product to a sump if the valves were left open. However, according to NuStar, the maintenance activity was not completed at the time of the release and the header pipe discharged product into a 5 gallon bucket rather than the sump. In its explanation of the release, NuStar stated that the operator of the station failed to close the block and bleed valve allowing product to escape the valve body. NuStar stated that the product was carried a distance into the 5 gallon bucket and therefore the release went unnoticed until 50 gallons had spilled into the manifold area. NuStar stated that clean up was completed immediately.<sup>2</sup>

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<sup>2</sup> Response, Exhibit A.

The second release occurred when a sump overflowed. NuStar stated in its Response that after restarting the pipeline, the control center detected a high level sump alarm. NuStar determined that a valve had been left partially opened during maintenance inspections which caused the release. NuStar stated in its Response that the released product was immediately cleaned up.<sup>3</sup>

The third release occurred when NuStar personnel were repairing the motor to the #2 mainline pumping unit. According to NuStar, as part of the maintenance procedures, the unit was started up to test for proper installation and alignment. During this test, the release occurred. NuStar stated in its Response that the product was immediately cleaned up.<sup>4</sup>

Finally, NuStar asserted that PHMSA did not define the meaning of “resulting from a pipeline maintenance activity” in the Final Rule and therefore operators must interpret for themselves which spills meet the exception.<sup>5</sup> NuStar also argued that collecting information for spills attributable to maintenance would “taint the data analysis efforts of PHMSA”.<sup>6</sup>

### *Analysis*

Section 195.50 requires all operators to report spills of 5 gallons or more. The reporting requirement dates back to July 27, 1981 when the Materials Transportation Bureau, a predecessor to PHMSA, amended the pipeline safety regulations in Part 195 to conform to terminology used in the Hazardous Liquid Pipeline Safety Act of 1979.<sup>7</sup> In 2002, in an effort to improve the quality of accident data, the agency amended the requirement to reduce the threshold for reporting from 50 barrels to 5 gallons. At that time, the agency also included an exception for spills under 5 barrels *resulting from pipeline maintenance activities*. At the time the rule was issued, RSPA, the predecessor to PHMSA, directly addressed this exception.

Our information is that such spills occur regularly upon the opening of pipelines for insertion of spheres, smart pigs, or for routine inspections. The spills are usually caught in a berm or other containment device; are cleaned up immediately; and have little to no impact on the environment. We believe information on such releases would not be helpful in accident trending analysis. Maintenance spills must be promptly cleaned up to avoid the reporting requirement. Any non-maintenance spill of 5 gallons or more must be reported.<sup>8</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> “*Transportation of Liquids by Pipeline*”, 46 Fed. Reg. 38357, 38363 (July 27, 1981).

<sup>8</sup> “*Pipeline Safety: Hazardous Liquid Pipeline Accident Reporting Revisions*”, 67 Fed. Reg. 831 (January 8, 2002).

Certainly, the agency's intention was to exclude planned or expected maintenance spills that occurred from opening the line. The instructions for the Accident Report (PHMSA Form 7000-1) explicitly state that "hazardous liquid releases *during* maintenance or other routine activities need not be reported if the spill was less than 5 barrels, not otherwise reportable under 49 C.F.R. § 195.50, and did not result in water pollution as described by 49 C.F.R. § 195.52(a)(4)."<sup>9</sup>

NuStar's three spills were certainly not planned and did not occur during maintenance activities. Rather, the spills occurred during a start up of the pipe and occurred as a result of personnel error after the maintenance activity had concluded. NuStar admitted that the first spill occurred during normal operational activities.<sup>10</sup> The second release occurred "after the completion of the maintenance inspections and restart of the pipeline".<sup>11</sup> The third release occurred during a start up test, which although is considered part of maintenance activities, the release was not planned akin to removing a pig, etc. As documented in the Violation Report, NuStar personnel confirmed during the OPS inspection that this failure occurred due to equipment failure.<sup>12</sup> Specifically, problems with the settings of the relief valve and case pressure during start up operations caused the release of product.<sup>13</sup>

I do not find NuStar's argument persuasive that requiring the reporting of these types of spills would force operators to report *all* spills. Operators should be reporting all spills greater than 5 gallons. The narrow exception only exempts reporting if the spill occurred during a maintenance activity, did not cause an explosion, fire, death, or injury, and is cleaned up promptly. As stated above, the exception is intended to capture only those spills that are planned or intended during maintenance. If the Section 195.50(b) exception were intended to include *all* spills that were in any way related to maintenance, then numerous spills would go unreported.

Accordingly, after considering all of the evidence, I find that NuStar violated the pipeline safety regulations by failing to report all three releases. The spills were not planned releases that occurred during maintenance activities but were rather caused by operator error or equipment failure during pipeline system operations.

**Item 3:** The Notice alleged that Respondent violated 49 C.F.R. § 195.573, which states in relevant part:

**§ 195.573 -- What must I do to monitor external corrosion control?**

(a) *Protected pipelines.* You must do the following to determine whether cathodic protection required by this subpart complies with Sec. 195.571:

(1) Conduct tests on the protected pipeline at least once each calendar

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<sup>9</sup> Instructions for Form PHMSA F 7000-1 (1-2001) (emphasis added) located at <http://www.phmsa.dot.gov>.

<sup>10</sup> Response, Exhibit A, page 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> Violation Report, at 3.

<sup>13</sup> *Id.*

year, but with intervals not exceeding 15 months. However, if tests at those intervals are impractical for separately protected short sections of bare or ineffectively coated pipelines, testing may be done at least once every 3 calendar years, but with intervals not exceeding 39 months....

The Notice alleged that Respondent violated 49 C.F.R. § 195.573 by failing to conduct corrosion control monitoring tests at various test stations once each calendar year between 2006-2009. Specifically, NuStar failed to conduct tests at stations on the 10-inch line for two years at MP 154.31, MP 172.69, and MP 225.96. Further, NuStar failed to conduct tests on the 16-inch line at MP 165.94 for two years and MP 172.69 for four years. In its Response, NuStar only contested the allegations as they applied to MP 154.31 and MP 172.69 on the 10-inch line. In support of its argument that these two stations were tested on an annual basis, NuStar provided close interval survey records from 2009 for both test stations and explained that MP 154.31 was replaced on October 24, 2009.

I have reviewed these records and find them acceptable. Therefore, I am withdrawing these two test stations from Item 3 but find a violation has occurred for the other three test stations. Accordingly, I find that Respondent violated 49 C.F.R. § 195.573 by failing to conduct tests at MP 225.96 on the 10-inch line and MPs 165.94 and 172.69 on the 16-inch line.

**Item 4:** The Notice alleged that Respondent violated 49 C.F.R. § 195.404, which states in relevant part:

**§ 195.404 -- Maps and Records.**

(c) Each operator shall maintain the following records for the period specified;

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404 by failing to maintain records for each inspection and test required by Subpart F. Specifically, NuStar failed to maintain inspection records for an overpressure safety device at the Arkansas Pump station for at least two years. During the inspection, NuStar could not produce overpressure inspection records for the previous two years. Although NuStar stated that the device was inspected and tested by a third party, NuStar could not produce the records to meet its obligations under § 195.404. In its Response, NuStar provided the records of the tests which were conducted by ConocoPhillips, the supplier of the line. NuStar stated that it would immediately begin joint inspections with ConocoPhillips so that NuStar could maintain its own documentation.

Section 195.404 of the pipeline safety regulations requires the operator to maintain records of each inspection and test for at least two years. Even in situations where a third-party performs the test, NuStar must maintain its own records for tests on its facilities to be in compliance with the regulations. Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404 by failing to maintain records for overpressure tests at the Arkansas Pump station.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

### ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$112,000 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$64,100 for Respondent's violation of 49 C.F.R. § 195.50(b), for failing to file accident reports for three hazardous liquid pipeline releases. In its Response, NuStar argued that the company should receive a credit for good faith since the agency had not clearly defined what types of spills qualified for the maintenance activity exception. As cited above, both the Final Rule and the Accident Report instructions have clarified the narrow intent of this exception and that it only applies to releases that occur *during* maintenance, not related to maintenance.

The proposed civil penalty is based on the civil penalty assessment factors listed in 49 C.F.R. § 190.225. As stated in the Violation Report, the gravity for this violation was low since it involved a failure to file a report; however, the operator did not file the accident report for three different accidents which was factored into the proposed civil penalty.<sup>14</sup> The violation was discovered by PHMSA, not the operator. Finally, the operator's prior history was a factor since NuStar had three Final Orders issued in the previous five years.<sup>15</sup> Having reviewed the civil penalty assessment factors and the evidence presented in this case, I find that the proposed civil penalty of \$64,100 is justified. Accordingly, I assess Respondent a civil penalty of \$64,100 for violation of 49 C.F.R. § 195.50(b).

**Item 3:** The Notice proposed a civil penalty of \$28,700 for Respondent's violation of 49 C.F.R. § 195.573, for failing to conduct corrosion control monitoring tests from calendar year 2006 to 2009. As stated above, I have withdrawn the allegations related to MP 154.31 and MP 172.69 on the 10-inch line. The civil penalty amount is reduced to reflect that only three test stations were missed instead of the proposed five. However, the foundation of the penalty amount is based on the gravity of the violation, the circumstances surrounding the violation including the duration of the missed tests, and the prior history of the operator. NuStar's failure to inspect three test stations for consecutive years was factored into the civil penalty amount.

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<sup>14</sup> Violation Report, at 4.

<sup>15</sup> Violation Report, at 15.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$27,900 for violation of 49 C.F.R. § 195.573.

**Item 4:** The Notice proposed a civil penalty of \$19,200 for Respondent's violation of 49 C.F.R. § 195.404, for failing to maintain records for each inspection and test, as required under Subpart F. PHMSA has examined the civil penalty assessment factors and determined that Respondent should receive a reduced civil penalty on account of its culpability. Although NuStar ensured that the required overpressure protection tests were conducted, it failed to maintain inspection records for an overpressure safety device at the Arkansas Pump station for at least two years. ConocoPhillips conducted the overpressure protection inspections on NuStar's inlet piping and therefore NuStar was unaware that it was also required to maintain records of these tests. NuStar has agreed to conduct joint inspection and testing of the overpressure protection devices in the future. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a reduced civil penalty of \$9,200 for violation of 49 C.F.R. § 195.404.

In summary, having reviewed the record and considered the assessment criteria for each of the Items cited above, I assess Respondent a total civil penalty of \$101,200.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, Oklahoma 73125. The Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$101,200 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 1 and 4 in the Notice for violations of 49 C.F.R. §§ 195.50(b) and 195.404, respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director has indicated that Respondent has taken the following actions to address some of the cited violations:

**Item 4:** NuStar has documented the inspections of the overpressure device at the Arkansas pump station and has entered an agreement with ConocoPhillips to conduct joint inspections of this facility in the future.



Accordingly, I find that compliance has been achieved with respect to this violation. Therefore, the compliance terms proposed in the Notice for Item 4 are not included in this Order.

As for the remaining compliance terms, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following action to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.50(b) (**Item 1**), Respondent must submit to PHMSA within 30 days of issuance of the Final Order, an accident report on Form 7000-1 for each of the three accidents and any additional accidents not previously reported that meet reporting criteria. NuStar must also notify the Director, Central Region that reports have been submitted including the number of reports, accident dates, date submitted to PHMSA, and PHMSA report number.
2. It is requested (not mandated) that NuStar maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to David Barrett, 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.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

### **WARNING ITEM**

With respect to Item 2, the Notice alleged probable violations of Part 195 specifically considered to be a warning item. The warning was for:

49 C.F.R. § 195.412 (**Item 2**) — Respondent's alleged failure to complete 26 patrols of six of its pipeline right-of-ways during the 2009 calendar year. NuStar completed 25 patrols but its contractor failed to complete the final patrol due to weather related issues.

NuStar presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline

Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.215. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued