

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 21, 2011

Mr. Todd Denton
NuStar Pipeline Operating Partnership, L.P.
2330 Loop 1604 W.
San Antonio, TX 78248

CPF 3-2011-5005

Dear Mr. Denton:

On April 5-9, 2010, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code inspected your records and facilities in Wichita, Kansas.

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

1. § 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 Sec. 195.52(a)(4);**

- (3) Confined to company property or pipeline right-of-way; and**
- (4) Cleaned up promptly;**

NuStar Pipeline Operating Partnership, L.P. (NuStar) did not report three releases of petroleum products greater than 5 gallons in volume. The releases occurred during pipeline system operations; therefore, they must be reported as required by 49 CFR § 195.50(b).

The first release (NuStar Incident ID: 466) occurred on December 1st, 2007 at the Geneva Station. The spill occurred during a tank switching operation, causing a release of 50 gallons. The second release (NuStar Incident ID: 4368) occurred on October 6th, 2009 at the Elm Creek Pump Station. The spill occurred when a sump overflowed releasing 89 gallons of fuel oil. The third release (NuStar Incident ID: 5345) occurred on January 22, 2010 at the El Dorado Station. The spill occurred during start up of a mainline pump, causing a release in the order-of-magnitude of 50 gallons.

2. §195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate mean of traversing the right-of-way.

NuStar did not complete 26 patrols of six of its pipeline rights-of-way in the 2009 calendar year. Only 25 patrols were completed on the following pipeline segments: McPherson to Geneva, Geneva to Phillipsburg, Geneva to North Platte, Sioux River to Rock Rapids, Council Bluffs to Sioux Falls, and Wood River to Huntington. The contractor for patrolling NuStar's pipelines failed to complete the final 26th aerial patrol of these segments within the calendar year due to weather problems and notified NuStar in January, 2010 of the error.

3. §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 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.

NuStar did not conduct corrosion control monitoring tests at various test stations from calendar year 2006 through calendar year 2009. The following locations were not tested for consecutive years on the 10-inch and 16-inch McPherson, KS to Geneva, NE parallel pipelines.

MP 154.31 10" ('08-'09)..... 2 yrs
MP 165.94 16" ('07-'08)..... 2 yrs
MP 172.69 10" ('08-'09)..... 2 yrs
MP 172.69 16" ('06-'09)..... 4 yrs
MP 225.96 10" ('07-'08)..... 2 yrs

4. §195.404 Maps and Records.

**(c) Each operator shall maintain the following records for the periods 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.**

NuStar did not maintain the inspection records for a overpressure safety device at the Arkansas City Pump Station for at least two years. Per 49 CFR §195.428 overpressure safety devices require periodic inspection and testing. The high pressure shutdown switch installed on and protecting NuStar's inlet piping at the Arkansas City Pump Station was reportedly inspected and tested by another party. NuStar had not acquired the documentation of the device's annual inspections. During PHMSA's regulatory inspection it was confirmed with NuStar that the pressure rating of the incoming pipeline system (operated by another company) has a higher maximum operating pressure rating than NuStar's piping.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$100,000 for each violation for each day the violation persists up to a maximum of \$1,000,000 for any related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$112,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
1	\$64,100
3	\$28,700
4	\$19,200

Warning Items

With respect to item 2 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. Be advised that failure to do so may result in NuStar being subject to additional enforcement action.

Proposed Compliance Order

With respect to items 1 and 4 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to NuStar Pipeline Operating Partnership, L.P. 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 Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being 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). 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.

In your correspondence on this matter, please refer to **CPF 3-2011-5005** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration

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

PROPOSED COMPLIANCE ORDER

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

1. In regard to Item Number 1 of the Notice pertaining to the three accidents that were not reported as required by §195.50, NuStar 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 shall 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. In regard to Item Number 4 of the Notice pertaining to the failure to maintain inspection records on the overpressure protection device installed on NuStar pipe at the Arkansas City pump station, NuStar must be able to document the completion of all inspection and testing requirements of devices on NuStar pipe whether performed directly by NuStar personnel or performed on NuStar's behalf pursuant to an agreement, and NuStar must maintain such documentation for the period specified in the regulations. Any required inspection and testing performed by another entity pursuant to an agreement must be performed by qualified personnel and copies of the records maintained by NuStar. Alternatively, NuStar may install overpressure protection device(s) on its inlet piping at the station and begin performing the necessary inspection and testing. A plan to accomplish this Item shall be furnished to PHMSA within 30 days of issuance of the Final Order for approval by the Director, Central Region. NuStar must complete necessary actions as delineated in the approved plan within 60 days of the Director's approval.
3. 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.