



December 29, 2011

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Mr. Byron Coy, P.E., Director
PHMSA Eastern Region
820 Bear Tavern Road, Suite 103
West Trenton, New Jersey 08628

RECEIVED DEC 30 2011

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RE: CPF 1-2011-5011

Dear Mr. Coy:

This letter is in response to a Notice of Probable Violation (NOPV), dated November 28, 2011, alleging violations of pipeline safety regulations at the ST Linden Terminal, operated by NuStar Terminals Operations Partnership, L.P. (NuStar). In addition to the evidence and arguments presented below, NuStar requests that PHMSA consider the sincere and good faith effort by NuStar to operate and maintain our facilities in full compliance with the pipeline safety regulations, prior to any PHMSA involvement. After considering the below information, NuStar respectfully requests that PHMSA reduce the proposed penalty amount for Alleged Violations #2 and 3 and reduce to *warning items* Alleged Violations #1 and 5. NuStar also requests that PHMSA dismiss Alleged Violation #4.

Background

The ST Linden Terminal was historically not considered a "pipeline facility", but rather a marine terminal facility with intra-terminal piping. Prior to NuStar acquiring this facility, the prior owner/operator had never considered the intra-terminal "Marine to Inland" pipelines as being subject to the pipeline safety regulations.

In the past few years, NuStar had recognized the potential applicability of pipeline safety regulations to this terminal and employed internal and external regulatory expertise to assess the situation. During a PHMSA construction inspection of the Buckeye Transfer pipeline in 2008, NuStar inquired to the PHMSA inspector as to the regulatory applicability of the intra-terminal pipelines. However, even the PHMSA auditor could not provide a definitive answer. In 2009, a unilateral decision was made by NuStar to operate and maintain all intra-terminal transfer lines at this terminal in accordance with Part 195 pipeline safety regulations. It was NuStar that made PHMSA aware of these pipelines and that subjected these pipelines to regulatory scrutiny.

Additionally, please consider the "LIN-STA-10" and "Buckeye Transfer" pipelines' operational status when determining an appropriate penalty for this NOPV. See Exhibit A for a diagram of the facility's pipelines. The LIN-STA-10 is an "idled" pipeline which has not transported hazardous liquids in over 15 years. This pipeline is physically disconnected from the hazardous liquid system and is under a nitrogen purge. NuStar voluntarily continues to maintain this pipeline in accordance with certain provisions of Part 195 (i.e. navigable waterway inspections, cathodic protection, etc.). However, in

accordance with PHMSA interpretation #PI-08-0003, the LIN-STA-10 pipeline in its current state, does not meet the applicability provisions of § 195.1 and is not subject to the requirements of Part 195. Also, the Buckeye Transfer pipeline was constructed in late 2008 and first began transporting hazardous liquids in January 2009. Therefore, any alleged violations from the 2008 time period would not be applicable to the Buckeye Transfer pipeline.

Alleged Violation #1

§ 195.404 Maps and records.

(b) Each operator shall maintain for at least 3 years daily operating records that indicate-
(1) The discharge pressure at each pump station; and

NuStar failed to maintain daily operating records from 2008 through 2010 that indicated the discharge pressure at each pump station during normal and abnormal operations at the Linden Terminal. A PHMSA representative reviewed NuStar's Pipeline Certificate form and identified missing or incomplete data. NuStar's Pipeline Certificate form is used to manually record the start time and intervals. NuStar failed to record the discharge pressure at all the time intervals noted on the form on the Pipeline Certificate forms dated 8/8/08, 5/18/09, 12/26/09, and 12/27/09, and 3/30/10.

It is important to note that upon further review, a PHMSA representative discovered that the discharge pressure records were not only incomplete, but more importantly the chosen time interval for collecting pressure data during normal and abnormal operation, did not provide for an adequate record of discharge pressure.

NuStar Response:

Initially, please consider that the pipeline identified as "LIN-STA-10" is not currently in hazardous liquid service; therefore, there are no pump-discharge pressures to record. The pipeline identified as "Buckeye Transfer" has a SCADA system which records pump discharge pressures on a continuous basis. These recordings were demonstrated to the PHMSA auditors with no concerns noted.

Next, the alleged violation refers only to the intra-terminal pipelines identified as "Marine to Inland #1, 2, 3, and 4". These short (~one mile) pipelines transfer product between the two sections of the ST Linden Terminal. These pipelines are manually operated with no remote control or monitoring capabilities. NuStar's Pipeline Certificate form required that manifold pressures be recorded on an hourly basis during intra-terminal transfers. A spot check of these forms by the PHMSA auditor revealed that this process was not always followed.

As part of our dedication to continuous improvement, NuStar has since revised the form and procedures and re-trained personnel on its proper use. The procedure requires that pressure gauges at the pump manifolds are read and recorded on an hourly basis once a steady state transfer condition is reached (Exhibit B). (Note: During start-up of a transfer, the pipeline pressure is monitored constantly until

steady-state is reached). We believe this meets the requirement of the regulation and will help ensure no further incidents of non-compliance.

In addition, the proposed penalty amount is inconsistent with similar violations alleged against other operators. For example, CPF 5-2011-5014 alleges a very similar violation involving a relatively short pipeline, such as NuStar's. In this example, however, the accused operator made no attempt to record discharge pressures, as their system was not even equipped with a pressure reading device at the discharge location. Despite these facts, PHMSA chose not to levy a monetary penalty for this alleged violation. To demonstrate fair and consistent enforcement policy, NuStar respectfully requests that PHMSA forego the proposed penalty for this alleged violation and reduce this to a *Warning Item*.

Alleged Violation #2

§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 failed to maintain fifty-one (51) right-of-way (ROW) inspection records for at least 2 years. Pursuant to §195.412(a), each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface condition on or adjacent to each pipeline right-of-way. A PHMSA representative requested NuStar personnel to provide ROW records for the second quarter of the calendar year 2008 through the second quarter of calendar year 2010. NuStar could only produce a single ROW record for an inspection that took place on 11/10/2009.

NuStar Response:

NuStar would like to correct the allegation that ROW inspection records were not maintained during the periods of 2008 through the second quarter of 2010. The allegation incorrectly states that NuStar could only produce a single ROW record for an inspection that took on place on November 10, 2009.

On November 10, 2009, NuStar began documenting ROW inspections on the *Linden Right of Way Inspection Report* to better align our documentation method with Company procedures for other longer distance pipelines. During the audit, NuStar provided the PHMSA auditor with the *Linden ROW Inspection Reports* for the period beginning on November 10, 2009 through the time of the audit. These inspections were documented on a bi-weekly interval, in compliance with §195.412(a) for the remainder of 2009 (see Exhibit C). Therefore, the correct number of ROW inspections not properly documented during the period of 2008 and 2009 is 46, not the 51 stated in the alleged violation.

In consideration of the evidence provided and the operational status of the LIN-STA-10 and Buckeye Transfer pipelines during these time periods, NuStar respectfully requests that PHMSA reduces the proposed penalty accordingly.

Alleged Violation #3

§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 failed to maintain inspection records for seventeen (17) mainline valves located at the Linden Terminal for at least 2 years. Pursuant to §195.420(b), an operator shall, at intervals not exceeding 7 ½ months but at least twice each calendar year inspect each mainline valve to determine that it is functioning properly. NuStar personnel provided a list (*below*) of mainline valves; however, no records of inspections conducted on those valves were available for calendar years 2008 and 2009.

NuStar Response:

NuStar concedes that mainline valve inspection documentation could not be provided for calendar year 2008 and 2009 for the "Marine to Inland" pipelines. However, the Buckeye Transfer pipeline did begin transporting hazardous liquids until January 2009; therefore, no mainline inspections were required for this pipeline in 2008. As well, mainline valve inspections are not required for the LIN-STA-10 pipeline for 2008 or 2009, as this pipeline was idled and not transporting hazardous liquids during this time period.

In considering these facts, the actual number of valve inspections that were not documented is approximately 30 percent less than what is alleged. Accordingly, NuStar respectfully requests that the proposed penalty be reduced proportionate to this percentage.

Alleged Violation #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 failed to maintain records of inspections and tests performed on firefighting equipment at the Linden Terminal for at least 2 years. 49 CFR Part 195.430(a) requires operators to ensure firefighting equipment is in proper operating condition at all times. During the inspection, NuStar personnel stated that a field storage tank located in the firehouse at the Linden Terminal was used for fighting fires. NuStar personnel could not produce any records that verified the field storage tank at Linden Terminal was in proper operating condition to fight fires.

NuStar Response:

NuStar respectfully disputes this alleged violation. 49 CFR §195.430(a) provides a performance standard that firefighting equipment must be in "proper operating condition at all times", but does not

prescribe a specific testing, inspection, or documentation requirement. The alleged violation cites §195.404(c), which applies to "each inspection and test required by this subpart". Therefore, this regulation does not apply to the requirement that all firefighting equipment be in proper operating condition, as there is no inspection or test required by this subpart.

Despite the lack of a specific testing or inspection requirement in Part 195, the Terminal's firefighting system is regulated and inspected by the City of Linden Fire Marshal and undergoes annual inspection and testing in accordance with NFPA 25: *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems* (Exhibit D). NuStar believes that NFPA 25 provides a superior standard for demonstrating adequate operation of a water-based firefighting system.

In consideration of the fact that NuStar has annually demonstrated proper operating condition of the system, including the water storage tank, in accordance with the applicable NFPA standard, and that §195.404(c) is not applicable to such testing because it is not required by Part 195, NuStar respectfully requests that this alleged violation be dismissed.

Alleged Violation #5

§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 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 failed to conduct tests on cathodically protected pipeline at the required interval. At the time of the inspection, NuStar provided corrosion control records that showed it conducted a cathodic protection (CP) survey on its protected pipelines on 1/10/2008 and the next CP survey was conducted on 9/11/2009. While NuStar completed the tests once each calendar year, the time frame between 1/10/2008 and 9/11/2009 exceeded the maximum of 15 months interval as prescribed in §195.573(a)(1). Additionally, NuStar personnel confirmed that the corrosion control records documented the dates the CP surveys were conducted. Therefore, the records verified that the pipeline system at Linden Terminal had in fact been tested at an interval exceeding 15 months.

NuStar Response:

NuStar is not disputing the allegation that it exceeded the allowable interval between annual cathodic protection surveys by a period of approximately 3 months between 2008 and 2009. However, NuStar respectfully requests that PHMSA reconsider the magnitude of penalty associated with this violation. NuStar is dedicated to ensuring safety, regulatory compliance, and asset preservation through properly functioning cathodic protection systems. As an illustration of this, NuStar has invested over \$150,000 in capital improvements to the terminal's cathodic protection system over the past two years. As Nustar has already spent over 5 times the proposed penalty amount in upgrades to the cathodic protection

systems, NuStar respectfully requests that PHMSA reduce this violation to a *Warning Item* to recognize our commitment to pipeline safety.

Conclusion

To prevent future lapses of regulatory compliance deadlines, NuStar is implementing a Compliance Management System (CMS) at the ST Linden Terminal. This CMS will be a comprehensive system for managing, tracking, and reporting on all regulatory compliance tasks and deadlines. NuStar is committed to ensuring ongoing regulatory compliance with pipeline safety regulations.

In consideration of NuStar's good faith effort to be an exemplary steward of safety and the environment, we ask that PHMSA exercise its enforcement discretion and further reduce any penalties to reflect an acknowledgment of this effort. Such enforcement discretion would create a regulatory environment which may also encourage other operators to self-identify their assets which may be subject pipeline safety regulations, and in turn further promote our common goal of pipeline safety and regulatory compliance.

If you have any further questions, or would like to discuss this further, please do not hesitate to contact myself at (210) 918-2038 or Aaron W. Martinez, Supervisor Pipeline Safety, at (210) 918-3186.

Sincerely,



Michael F. Pesch
Vice President