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March 15, 2012

CPF 3-2012-5004

Mr. Barrett,

After considering the below information, NuStar Pipeline Operating Partnership, L.P. respectfully requests you mitigate the penalty from this Notice of Probable Violation (NOPV) to less than \$47,400. This amount is more appropriate than the \$72,500 proposed penalty because 1) an amount less than \$47,400 is more consistent with past penalties from similar or analogous NOPVs and 2) an amount less than \$47,400 is more appropriate based on an objective application of the penalty factors in 49 CFR § 190.225.

First, we have concluded an amount less than \$47,400 is more consistent with past penalties from similar or analogous NOPVs. Before coming to this conclusion, we reviewed the public NOPVs from the last three years, including but not limited to the below cases:

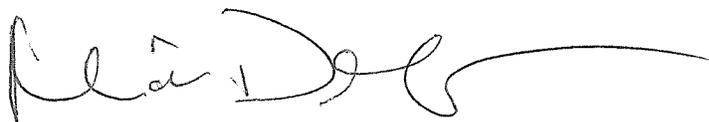
Date Opened	CPF	Operator (OPID)	Description	Proposed Penalty	PHMSA Region	Case Status
6/26/2009	1-2009-5002	Buckeye (1845)	Excessive vegetation and overgrowth at 3 areas on the ROW	\$0	Eastern	OPEN
7/20/2010	5-2010-5022W	ExxonMobil (4906)	Excessive vegetation in one area on the ROW	\$0	Western	CLOSED
2/23/2011	5-2011-5003	ExxonMobil (4906)	Excessive vegetation at 3 areas on the ROW. Also, aerial view obstructed by a housing development	\$0	Western	CLOSED
4/8/11	1-2011-5004	Colonial (2552)	Excessive vegetation and overgrowth on 3 areas of the ROW	\$43,100	Eastern	CLOSED
12/12/11	2-2011-5012	Enterprise (31618)	Excessive vegetation and tree canopy on 19 areas of the ROW	\$47,400	Southern	OPEN
1/13/2012	3-2012-5001W	TC Oil Operations	Tree canopy overgrowth over 250 feet of the ROW	\$0	Central	CLOSED
2/2/2012	1-2012-5001	Enterprise (31618)	Overgrowth on 6 areas of the ROW	\$18,700	Eastern	OPEN
2/14/2012	3-2012-5004	NuStar (31454)	Overgrown with vegetation on 1 area of the ROW	\$72,500	Central	OPEN

Next, an amount less than \$47,400 is more appropriate based on an objective application of the penalty factors in 49 CFR §190.225. Without the benefit of a penalty calculations worksheet, it is difficult for us to determine how the agency objectively determined a \$72,500 fine is necessary in this case. As a result, we have conducted our own penalty analysis under the regulatory factors. Below is a summary of our analysis. Under 49 § CFR 190.225, the following factors should be considered (our analysis inserted in parenthesis):

- (1) The nature, circumstances and gravity of the violation, including adverse impact on the environment; (There was no actual adverse impact to the environment. Due to the unique characteristics of anhydrous ammonia, the presence of dense vegetation does not inhibit the ability to detect a leak from the pipeline. In fact, dense vegetation may actually increase the visibility of distress and necrosis to vegetation caused by a pipeline leak.)
- (2) The degree of the respondent's culpability; (This was not intentional; we had conducted aerial inspections of the right of way (ROW) and we have significantly increased our spending for ROW clearance. Spending for ROW clearance in 2011 totaled over \$1 million dollars.)
- (3) The respondent's history of prior offenses; (Although this is a repeat offense, this factor does not justify a \$72,500 penalty. Please note that Exxon Mobil and Enterprise had repeat violations per the above table, but our penalty is much higher.)
- (4) The respondent's ability to pay; (Not requesting as a mitigating factor.)
- (5) Any good faith by the respondent in attempting to achieve compliance; (We quickly remedied the violation and had conducted aerial inspections of the ROW.)
- (6) The effect on the respondent's ability to continue in business; and (Not requesting as a mitigating factor.)
- (7) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and (No significant economic benefit. As stated above, NuStar has made significant investments in ROW clearing.)
- (8) Such other matters as justice may require. (Justice demands this NOPV's penalty is consistent with past similar or analogous NOPVs.)

In conclusion, based on the above, we respectfully request you mitigate the penalty from this NOPV to an amount less than \$47,400.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Dillinger", with a long horizontal flourish extending to the right.

Michael Dillinger
Counsel for NuStar Pipeline Operating Partnership, L.P.