



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue SE  
Washington, DC 20590

**MAR 20 2014**

Mr. Curt Anastasio  
Chief Executive Officer and President  
NuStar Energy, LP  
19003 IH-10 West  
San Antonio, TX 78257

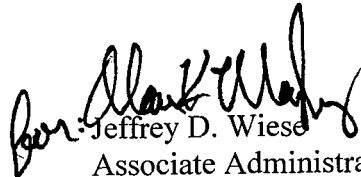
**Re: CPF No. 3-2012-5004**

Dear Mr. Anastasio:

Enclosed please find the Final Order issued in the above-referenced case to your subsidiary, NuStar Pipeline Operating Partnership, LP. It makes a finding of violation and assesses a civil penalty of \$72,500. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. 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: Ms. Linda Daugherty, Director, Central Region, OPS  
Mr. Gerald Koegeboehn, Vice President and General Manager, NuStar Pipeline  
Operating Partnership, LP  
Mr. Michael Dillinger, Counsel, NuStar Pipeline Operating Partnership, LP

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

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In the Matter of )  
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NuStar Pipeline Operating )  
Partnership, LP, )

CPF No. 3-2012-5004

Respondent. )  
\_\_\_\_\_)

**FINAL ORDER**

On May 16-20 and July 11-15, 2011, pursuant to 49 U.S.C. § 60117, representatives 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 the NuStar Pipeline Operating Partnership, LP (NuStar or Respondent) anhydrous ammonia pipeline system in Missouri, Iowa, and Nebraska. The system consists of approximately 1,925 miles of pipeline and transports product from the Louisiana Gulf Coast to Indiana and Nebraska. NuStar is a wholly-owned subsidiary of NuStar Energy, LP.<sup>1</sup>

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated February 14, 2012, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that NuStar had violated 49 C.F.R. § 195.412(a) and assessing a civil penalty of \$72,500 for the alleged violation.

NuStar responded to the Notice by letter dated March 15, 2012 (Response). The company did not contest the allegations of violation but 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.

**FINDING OF VIOLATION**

The Notice alleged that Respondent violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.412(a), which states:

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<sup>1</sup> NuStar Energy L.P., Annual Report (Form 10-K), at 3 (Mar. 1, 2013).

**§ 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 means of traversing the right-of-way.

The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect the surface conditions on the Company's right-of-way for its anhydrous ammonia pipeline system. Specifically, the Notice alleged that NuStar's method of inspecting the right-of-way was aerial patrolling, but a section of the right-of-way in Iowa was so overgrown with vegetation that it made aerial patrolling ineffective. The Notice alleged that NuStar had not implemented another method of inspecting the surface conditions at this location and that the operator had been cited for, and found guilty, of a violation of the same regulation in a previous enforcement action [CPF No. 3-2007-5002].

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect the surface conditions on its pipeline right-of-way.

This finding of violation will be considered a prior offense 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 \$72,500 for the violation cited above.

**Item 1:** The Notice proposed a civil penalty of \$72,500 for Respondent's violation of 49 C.F.R. § 195.412(a), for failing to inspect the surface conditions on its pipeline right-of-way. In its Response, NuStar requested that the proposed penalty be reduced and argued that the proposed penalty was excessive and should be reduced to not more than \$47,400.

First, NuStar argued that the penalty was excessive when compared to other penalties assessed by PHMSA for similar violations of 49 C.F.R. § 195.412(a). Specifically, NuStar cited seven previous final orders where the penalty for a violation of this regulation had ranged from \$0 to \$47,400.

For several reasons, I find this argument unconvincing. As PHMSA has indicated in other enforcement proceedings the agency applies the statutory penalty assessment criteria on a case-by-case basis that takes into account the unique facts and circumstances of each violation.<sup>2</sup> Such an analysis may include how a particular violation was discovered, its duration, whether the operator made a good-faith effort to comply with the regulation prior to the inspection or accident, and the operator's history of prior violations. It is therefore not uncommon for there to be some variance in the penalties assessed for different operators' violations of the same code section.

I would note that there is no legal requirement that a regulatory agency impose uniform penalties or identical remedies for violations of the same regulation, nor is there any requirement to compare the factual circumstances of every past finding of violation when proposing and assessing penalties. On the other hand, PHMSA strives to use a penalty assessment process designed to maximize consistency and fairness in the imposition of civil penalties throughout the country and to impose substantially similar penalties for comparable levels of gravity, culpability, compliance history, and the other assessment factors enumerated in 49 C.F.R. § 190.225.

NuStar has specifically pointed to seven prior cases where PHMSA assessed either no penalty at all or lower penalties for violations of 49 C.F.R. § 195.412(a) than what has been proposed here. Respondent compared the circumstances of this case to those in the seven cited cases and proposed that PHMSA impose a penalty no greater than \$47,400, the amount assessed against Enterprise Products Operating, LLC, in a final order issued October 22, 2012.

NuStar is correct that the penalty proposed here is larger than any of the ones assessed in the seven cited cases. We have carefully reviewed the case file in this proceeding and compared the penalty proposed here with the ones assessed in the ones cited by Respondent. The principal difference, and the greatest aggravating factor in the present case, is that NuStar's violation of 49 C.F.R. § 195.412(a) involves a repeat violation of the same regulation for which NuStar had been previously cited and that had been finally adjudicated prior to the inspection upon which the present case was based. On February 5, 2009, in a case with facts remarkably similar to those of the present case, NuStar was found guilty of violating § 195.412(a) for failure to conduct proper aerial inspections of its right-of-way.

In the previous case, NuStar had relied upon aerial patrolling but had allowed vegetation to grow up over the right-of-way in four locations on the same anhydrous ammonia pipeline system. The final order imposed a civil penalty of \$38,000, and required NuStar to develop and implement a plan for clearing its right-of-way and to use an alternative means of patrolling the right-of-way until it had been properly cleared. Therefore, NuStar was clearly aware of the regulatory requirement in § 195.412(a), had been penalized for failing to conduct basic surveillance of its right-of-way, and yet still failed to properly implement a compliant inspection program by the date of the new PHMSA inspection in May-July 2011, more than two years after first being ordered to do so.

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<sup>2</sup> See, e.g., *In the Matter of Belle Fourche Pipeline Company*, CPF No. 5-2009-5042 (Nov. 21, 2011), and *In the Matter of BP Pipelines (North America), Inc.*, CPF No. 3-2010-5007 (Dec. 27, 2012).

Second, NuStar argued that in two of the seven cases, the operators had also committed prior violations but were assessed either no penalty at all or one much smaller than the one proposed here. However, these two cases are inapposite because those operators had not been found guilty of a prior violation of the same regulation, in a final adjudication, *prior to the date of the subsequent offense*. PHMSA does not impose enhanced penalties for repeat offenses unless an operator has already been found guilty of the prior offense, in a final agency action, prior to the date of the subsequent inspection/accident.

Third, NuStar argued that the proposed penalty was excessive considering the assessment criteria set forth in 49 C.F.R. § 190.225. NuStar presented several arguments why the penalty should be reduced, two of which had been raised in CPF No. 3-2007-5002.<sup>3</sup> In addition, the company argued that the gravity of the violation was minimal because no accident was involved and there had been no adverse impact to the environment. The fact that no accident resulted from the violation was already considered in arriving at the proposed assessment, as noted in the Violation Report. In fact, the penalty would have been significantly higher had an accident occurred as a result of the violation. Furthermore, the potential existed for damage to the pipeline or an accident due to inadequate patrolling.

Finally, NuStar argued that the violation was “not intentional” and that the company had increased its budget for clearing the right-of-way. Again, the proposed penalty would have been higher or a criminal penalty sought if the violation had been knowing and willful. It also would appear that if the company had undertaken major efforts prior to the 2011 inspection to improve its aerial patrolling system, it would have cleared this particular area. Regardless, PHMSA expects any reasonable and prudent operator to spend the funds necessary to protect its right-of-way and the public from encroachments and hazardous conditions that may jeopardize its facilities. Such safety measures to meet the pipeline safety standards do not entitle an operator to a reduced penalty.

In summary, it was Respondent’s repeat violation of 49 C.F.R. § 195.412(a) and the risks associated with its failure to adequately patrol its right-of-way that justify the proposed penalty amount in this case. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$72,500 for violation of 49 C.F.R. § 195.412(a).

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 **\$72,500**.

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

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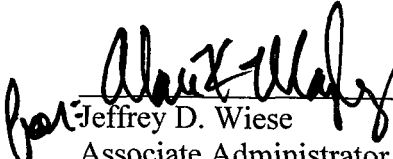
<sup>3</sup> In both CPF No. 3-2007-5002 and the present case, NuStar argued that due to the unique nature of anhydrous ammonia, the presence of dense vegetation in the right-of-way does not inhibit leak detection and therefore the presence of such vegetation should not be considered a serious violation. In addition, the company argued that NuStar was entitled to credit for its post-inspection efforts to correct the violation. Both arguments, however, were considered and rejected in CPF No. 3-2007-5002 and I see no reason here to address these arguments again.

Financial Operations Division telephone number is (405) 954-8893.

Failure to pay the \$72,500 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.

Under 49 C.F.R. § 190.215, Respondent has the 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 the 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 but does not stay any other provisions of the Final Order, including any required corrective actions. If Respondent submits payment of the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived.

The 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

MAR 20 2014

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Date Issued