

AUG 31 10

Mr. Todd Denton
Vice President of Operations
NuStar Logistics, L.P.
One Valero Way
San Antonio, Texas 78249

Re: CPF No. 4-2007-5019

Dear Mr. Denton:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$50,000. It further finds that NuStar Logistics, L.P. has completed the actions specified in the Notice to comply with the pipeline safety regulations. When the civil penalty has been paid, 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. Rod Seeley, Director, Southwest Region, PHMSA
Ms. Rebecca Fink, Counsel, NuStar Logistics, L.P.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7009 1410 0000 2472 2896]

**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)	
)	
NuStar Logistics, L.P.,)	CPF No. 4-2007-5019
)	
Respondent.)	
)	

FINAL ORDER

On various dates in 2004 and 2005, 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 NuStar Logistics, L.P. (NuStar or Respondent) in San Antonio, Texas. NuStar operates approximately 4578 miles of petroleum and liquid hydrocarbon pipelines in various states including Texas, Oklahoma, New Mexico, and Colorado.

As a result of the inspection, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated May 21, 2007, 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. § 195.573 and proposed assessing a civil penalty of \$50,000 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

Respondent responded to the Notice by letter dated June 19, 2007, as supplemented by letter dated July 20, 2007 (Response), contested the allegation of violation and requested a hearing. An informal hearing was subsequently held via telephone conference on December 31, 2008, with Larry White, Attorney, PHMSA Office of Chief Counsel, presiding. At the hearing, Respondent was represented by counsel. Following the hearing, NuStar submitted additional materials for the record by letter dated December 22, 2009.

FINDING OF VIOLATION

The Notice alleged that Respondent violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(2), 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 §195.571:

(2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE Standard RP 0169 (incorporated by reference, see §195.3).

Specifically, the Notice alleged that NuStar failed to identify the circumstances in which a close-interval survey is needed to accomplish the objectives of the cited standard which include assessing the effectiveness of the cathodic protection system and identifying areas of inadequate protection.

In its June 19, 2007 Response, NuStar acknowledged that its corrosion control manual in place at the time of the inspection “did not identify the circumstances in which a close-interval survey or comparable technology would be used.”¹ NuStar stated that it subsequently revised the relevant portions of its corrosion control manual in 2005 and enclosed copies of the revised procedures with its Response. During the hearing, NuStar stated that it had conducted some close-interval surveys prior to the inspection in 2004 on portions of its pipelines but did not provide any records documenting that this work was performed. Respondent did provide documentation showing that close-interval surveys were performed on approximately 1387 miles of pipe during 2006 through 2008 under the close-interval survey procedures it added to its manual in 2005 after PHMSA’s inspection. This work resulted in the installation of cathodic protection rectifiers and ground beds totaling \$365,600 in 2006, \$116,380 in 2007, and \$851,794 in 2008.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(2) by failing to identify the circumstances in which a close-interval survey is needed to accomplish the objectives of paragraph 10.1.1.3 of NACE Standard RP 0169.

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.

¹ June 19, 2007 Response at page 1.

Item 1: The Notice proposed a civil penalty of \$50,000 for Respondent's violation of 49 C.F.R. § 195.573(a)(2) for failing to identify the circumstances in which a Close-Interval Survey is needed to accomplish the objectives of paragraph 10.1.1.3 of NACE Standard RP 0169.

Maintaining continuous and effective cathodic protection is a key part of pipeline safety. Operators are obligated to exercise care in selecting electrical survey methods to assess the effectiveness of the cathodic protection system, provide base line operating data, locate areas of inadequate protection levels, and identify areas likely to be adversely affected by construction or stray currents. This enables operators to take remedial measures such as clearing shorts, repairing inoperative cathodic protection equipment or adding supplemental cathodic protection where needed to prevent corrosion which can lead to failures.

In its Response and during the hearing, Respondent contended that the civil penalty amount proposed in the Notice should be reduced. First, Respondent argued that the increase in the amount of pipeline mileage on which close-interval surveys were performed during 2006 through 2008 was the result of a "discretionary decision" to obtain a base line for future risk assessments. Obtaining as base line, however, is one of the reasons for the close-interval survey requirement to begin with.

Second, Respondent contended that it had taken a "proactive stance" by purchasing upgraded software and hardware, installing remote monitor units, and adding personnel to its corrosion staff prior to the issuance of the Notice. I acknowledge that NuStar took action to address the situation. These activities, however, took place after PHMSA's inspection and therefore do not constitute a good faith effort to comply.

Third, Respondent argued that the violation involved written procedures and that no leak or safety hazard occurred. While Respondent was fortunate that a corrosion leak did not occur, the purpose of corrosion control measures is to prevent corrosion from happening in the first place.

Finally, Respondent questioned whether PHMSA had imposed lower penalties on other operators for violating this same regulation. PHMSA, however, assesses civil penalties in accordance with the assessment criteria set forth in 49 U.S.C. § 60122(b) and 49 C.F.R. § 190.225. When PHMSA proposes a penalty, it examines the allegations and supporting evidence on a case-by-case basis and applies the relevant assessment criteria to those particular facts. This analysis generally includes, among other things, a review of an operator's compliance history, how the alleged non-compliance was discovered and its duration, whether the respondent made a good faith effort to comply with the regulation prior to the inspection, and whether there was any immediate or potential safety or environmental impact. This fact-sensitive, case-by-case approach involves the consideration of risk factors and complexities unique to each pipeline system and under the relevant statute PHMSA has never represented that it would adopt a standard penalty schedule.

I would also note that the penalty assessed in this case is consistent with another recent enforcement case in which PHMSA proposed a similar amount for an alleged violation of § 195.573.²

² See *In the Matter of Kinder Morgan CO2 Logistics Operations, L.P.*, Notice of Probable Violation, CPF 4-2006-5003 (Jan. 20, 2006). The average amount proposed and/or assessed against eight other operators for violations of 49 C.F.R. § 195.573(a)(2), a closely related regulation, is \$32,300 (not including instances where a warning was given).

Respondent has presented no information or arguments warranting a reduction in the penalty amount proposed in the Notice for this violation. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$50,000 for violation of 49 C.F.R. § 195.573(a)(2).

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 \$50,000 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 Item 1 in the Notice for violation of 49 C.F.R. § 195.573(a)(2). 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 indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. Respondent added procedures to its corrosion control manual to identify the circumstances in which a close-interval survey is needed to accomplish the objectives of paragraph 10.1.1.3 of NACE Standard RP 0169.
2. Respondent collected and reviewed cathodic protection data, including IR drop measurements, and developed and submitted a plan and a time table to conduct close-interval surveys and cathodic protection system improvements as required.
3. Respondent submitted documentation on the results of the surveys, assessments, plans, and remedial work and maintained documentation of the costs associated with fulfilling the compliance requirements.

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

Under 49 C.F.R. § 190.215, Respondent has the right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2nd

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.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued