

DECEMBER 18, 2012

Mr. Curtis V. Anastasio
Chief Executive Officer, President and Director
NuStar Energy, LP
2330 N. Loop 1604 West
San Antonio, TX 78248

Re: CPF No. 1-2011-5011

Dear Mr. Anastasio:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$85,600. 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: Mr. Byron Coy, Director, Eastern Region, OPS
Mr. Alan Mayberry, Deputy Associate Administrator for Field Operations, OPS
Mr. Michael F. Pesch, Vice President, NuStar Terminals Operations Partnership, LP –
P.O. Box 781609, San Antonio, Texas, 78278
Mr. J. R. Bluntzer, Executive Vice President of Operations, NuStar Terminals Operations
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**

_____)	
In the Matter of)	
)	
NuStar Terminals Operations)	
Partnership, LP,)	CPF No. 1-2011-5011
)	
Respondent.)	
_____)	

FINAL ORDER

Between April 19 and 23, 2010, pursuant to 49 U.S.C. § 60117, a representative 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 Pipeline Operating Partnership, LP (NuStar or Respondent), in Linden, New Jersey. NuStar is a subsidiary of NuStar Energy, LP, which owns and operates 5,605 miles of refined product pipelines, 2,000 miles of anhydrous ammonia pipelines, and 812 miles of crude oil pipelines throughout the United States.¹

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated November 28, 2011, a Notice of Probable Violation and Proposed Civil Penalty (Notice), which also included a warning pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that NuStar had committed various violations of 49 C.F.R. Part 195 and proposed assessing a civil penalty of \$85,600 for the alleged violations. The warning item required no further action but warned the operator to correct the probable violation or face future potential enforcement action.

NuStar responded to the Notice by letter dated December 30, 2011 (Response). The company contested some of the allegations of violation, 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.

FINDINGS OF VIOLATION

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

¹ <http://www.nustarenergy.com/COMPANY/Pages/default.aspx> (last accessed March 8, 2012).

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(b)(1), which states:

§ 195.404 Maps and records.

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

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(b)(1) by failing to properly maintain for at least three years daily operating records indicating the discharge pressure for each pump station. Specifically, the Notice alleged that NuStar's Pipeline Certificate forms had incomplete or missing discharge pressure readings for the company's Linden Terminal Station from August 8, 2008, through March 10, 2010, a period of approximately 579 days.²

In response, NuStar acknowledged that certain Pipeline Certificate forms had missing or incomplete data during the period in question.³ Respondent explained that the forms required manifold pressures to be recorded on an hourly basis during intra-terminal transfers but that PHMSA's audit had revealed "this process was not always followed."

NuStar explained that, historically, the Linden Terminal Station had not been considered a "pipeline facility" but, rather, a marine terminal facility with intra-terminal piping.⁴ The company noted that prior to its acquisition of the facility, the previous owner/operator had never considered the intra-terminal "Marine to Inland" pipelines as being subject to the pipeline safety regulations. Respondent stated that it had recognized the potential applicability of PHMSA regulations to the terminal and had employed internal and external regulatory expertise to assess the situation. Respondent further noted that during a PHMSA construction inspection of one of these lines (i.e., the Buckeye Transfer pipeline) in 2008, NuStar had inquired about the applicability of 49 C.F.R. Part 195 to the intra-terminal pipelines but could not get a definitive answer from the PHMSA inspector. Nevertheless, NuStar contended that in 2009 it made a unilateral decision to operate and maintain all intra-terminal transfer lines at the terminal in accordance with federal pipeline safety laws and regulations.

NuStar also contended that several of the lines at the facility were not subject to the requirements of § 195.404(b)(1). First, it stated there were no discharge records for the Buckeye Transfer pipeline because that line utilized a SCADA system which recorded pump discharge pressures on a continuous basis and that such records had been provided to the PHMSA auditors, with no concerns noted. Second, Respondent contended that its "LIN-STA-10" pipeline had not been used in hazardous liquid service for over 15 years and that it was physically disconnected from the hazardous liquid system; therefore, there were no pump discharge records to be maintained.⁵

² Pipeline Safety Violation Report, (November 28, 2011) (Violation Report) at 3, and Exhibit A-1.

³ Specifically, NuStar acknowledged that the forms for the Marine to Inland lines did not always reflect manifold pressures on an hourly basis during intra-terminal transfers. Response at 2.

⁴ Response at 1.

⁵ Response at 2.

As for Respondent's contention that the LIN-STA-10 line had been idle for years, I agree this allegation of violation does not apply to inactive lines since they obviously do not have discharge pressure records. As for the contention that the Buckeye Transfer line utilizes a SCADA system that records discharge pressures on a continuous basis, PHMSA never intended for these records to be included in the Notice.

In summary, NuStar has conceded that some of the company's discharge pressure records between 2008 and 2010 had missing and incomplete data. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(b)(1) by failing to maintain for at least three years daily operating records indicating the discharge pressure of each pump station at its Linden Terminal Station.

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3), which states:

§ 195.404 Maps and records.

- (a)
- (c) Each operator shall maintain the following records for the periods specified:
 - (1)
 - (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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3) by failing to maintain 51 right-of-way (ROW) inspection records for at least two years or until the next inspection or test is performed, whichever is longer. Specifically, the Notice alleged that a single ROW inspection record, dated November 10, 2009, was the only record provided to PHMSA for the period extending from the second quarter of calendar year (CY) 2008 through the second quarter of CY 2010. The Notice alleged that a NuStar employee had confirmed that a single November 10, 2009 ROW inspection record was the only documentation pertaining to the period in question.⁶

In its Response, NuStar acknowledged that it did not have proper ROW inspection records for 46, as opposed to 51, inspections.⁷ The company stated that on November 10, 2009, NuStar began documenting ROW inspections on a bi-weekly basis in its Linden Right of Way Inspection Report (Linden Reports).⁸ NuStar also contended that the PHMSA auditor was provided with the Linden Reports for the period running from November 10, 2009, through the time of the audit. The company contended that it did provide four ROW inspection records for inspections performed from November 10, 2009, to December 21, 2009.

⁶ Violation Report at 8.

⁷ Response at 3.

⁸ Response at Exhibit C.

A review of the evidence shows that Respondent did provide four ROW inspection records for November 10, 2009, November 24, 2009, and December 2009, but that still does not account for the vast bulk of the missing records. I find that the difference between the 51 ROW inspection records cited in the Notice and the 46 acknowledged by the Respondent is immaterial to the question of whether a violation occurred. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(c)(3) by failing to maintain right-of-way inspection records for at least two years.

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3), which states:

§ 195.404 Maps and records.

- (a)
- (c) Each operator shall maintain the following records for the periods specified:
 - (1)
 - (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.

The Notice alleged that Respondent violated 49 C.F.R. § 195.404(c)(3) by failing to maintain for at least two years inspection records for each mainline valve located at the Linden Terminal. Specifically, the Notice alleged that NuStar failed to maintain for CYs 2008 and 2009 records for 17 mainline-valve inspections conducted at the Linden Terminal in accordance with 49 C.F.R. § 195.420(b).⁹ The Notice alleged that NuStar failed to provide valve inspection records for the following valves:

Line Segment	Valve Name
LIN-STA-10	1. MBV20 2. MBV30 3. MBV40
Buckeye Transfer	4. MBVM10 5. LTV20 6. MBVM20 7. LTV10
Marine to Inland #1	8. MBV10 9. MBV30
Marine to Inland #2	10. MBV10 11. MBV20 12. MBV30
Marine to Inland #3	13. MBV10 14. MBV20 15. MBV30

⁹ 49 C.F.R. § 195.420(b) requires that each operator shall inspect, at intervals not exceeding 7½ months but at least twice each calendar year, each mainline valve to determine that it is functioning properly.

Marine to Inland #4	16. MBV20 17. MBV30
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In response, NuStar acknowledged that the company had failed to provide mainline-valve inspection documentation for CYs 2008 and 2009 for the four “Marine to Inland” pipelines listed above.¹⁰ However, NuStar maintained that the Buckeye Transfer pipeline did not begin transporting hazardous liquids until January 2009 and therefore no mainline inspections were required for this pipeline in 2008. Similarly, Respondent maintained that mainline valve inspections were not required for the LIN-STA-10 pipeline for 2008 or 2009, as this pipeline was idled and not transporting hazardous liquids.

As for the Buckeye Transfer pipeline, I agree. After a review of the NPMS data submitted by NuStar, I find that mainline-valve inspections were not required for this line in 2008 and, therefore, that no records needed to be maintained.

As for the LIN-STA-10 pipeline, I find that inspections of mainline valves were still required for this line since it had not been formally abandoned. An abandoned pipeline must be physically isolated from active pipelines, disconnected from all sources of liquids, purged of liquids, and sealed at both ends; only pipelines permanently removed from service are exempt from Part 195 regulations.¹¹ If a pipeline has not been abandoned according to §195.402(c)(10), then it is considered active and the operator must comply with all requirements of Part 195. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.404(c)(3) by failing to maintain for at least two years inspection records for each mainline valve on its LIN-STA-10 pipeline and the four “Marine to Inland” pipelines.

Item 5: The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1), which states:

§ 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.

¹⁰ Response at 4.

¹¹ 49 C.F.R. § 195.2. See also, *In the Matter of Equistar Chemicals, LP*, PHMSA Interp. No. 08-003 (Apr. 6, 2009) (available at www.phmsa.dot.gov/pipeline/regs/interps) (“ceasing normal operation of a pipeline does not remove the pipeline from PHMSA’s jurisdiction[;] [but] [i]f you have abandoned a Part 195 jurisdictional pipeline according to § 195.402(c)(10) the requirements no longer apply[;] [however,] [t]he abandoned pipeline may not be returned to service unless the pipeline was maintained according to Part 195 requirements while it was abandoned, or meets the requirements of a newly designed and constructed pipeline.”)

The Notice alleged that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on cathodically protected (CP) pipelines at least once each calendar year, but with intervals not exceeding 15 months. Specifically, the Notice alleged that the company's corrosion control records showed an annual CP survey had been conducted on the pipeline system at the Linden Terminal on January 10, 2008, but not again until September 11, 2009, a period exceeding the required 15-month interval by six months. The Notice further alleged that NuStar personnel had acknowledged that the tests had exceeded the required 15-month interval.¹²

In response, Respondent acknowledged that it had exceeded the allowable interval between annual cathodic protection surveys by approximately three months between 2008 and 2009.¹³

The primary purpose of the annual testing required by § 195.573(a)(1) is to provide an operator with information about whether it is providing adequate cathodic protection to its pipelines. I find that NuStar conducted tests on its CP pipelines January 10, 2008, but did not complete its next tests until September 11, 2009, which exceeded the required 15-month interval by three months and not the six months alleged in the Notice. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.573(a)(1) by failing to conduct tests on CP pipelines at least once each calendar year, but with intervals not exceeding 15 months.

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 \$85,600 for the violations cited above.

As a preliminary matter, NuStar argued generally that several of the proposed penalties should be reduced on account of ambiguity that had arisen regarding the applicability of Part 195 to the Linden Terminal facility and because of the company's good-faith efforts to comply with the regulations. First, I would note that Respondent provided no evidence to support its contention that a PHMSA inspector could not provide a definitive answer as to whether 49 C.F.R. Part 195 applied to the intra-terminal pipelines. Second, in situations where there is genuine uncertainty regarding the applicability of Part 195 to an operator's facilities, PHMSA provides a readily

¹² Violation Report at 19, and Attachment A at 25.

¹³ Response at 5.

available means of obtaining information and advice about compliance with pipeline safety regulations via PHMSA's website, phone line, or email or a formal request for an interpretation under 49 C.F.R. 190.11. There is no indication that NuStar availed itself any of these opportunities.

Item 1: The Notice proposed a civil penalty of \$10,700 for Respondent's violation of 49 C.F.R. § 195.404(b)(1), for failing to maintain for at least three years daily operating records indicating the discharge pressure for each pump station at the Linden Terminal Station. As discussed above, NuStar acknowledged that its Pipeline Certificate forms had missing and incomplete data but argued that the proposed penalty amount should be reduced for two reasons.

First, it argued that the company deserved credit for remedial actions it had taken following the inspection. NuStar asserted that as part of its "dedication to continuous improvement," it had revised its Pipeline Certificate forms and procedures and re-trained its personnel.¹⁴ While such actions are commendable, I see no reason to mitigate a proposed penalty for actions that any reasonable and prudent operator would take in response to an allegation of violation.

Second, NuStar argued that the proposed penalty is inconsistent with penalties assessed against other operators for similar violations. In particular, the company compared the present case to *In the Matter of ConocoPhillips Pipe Line Company*, CPF No. 5-2011-5014, where the operator made no attempt to record discharge pressures, as the system was not even equipped with a pressure-reading device at the discharge location.¹⁵ Respondent argued that despite these facts, PHMSA chose not to levy any monetary penalty. NuStar requested that PHMSA forego the proposed penalty in the instant case and reduce it to a warning item, to demonstrate a fairer and more consistent enforcement policy.

I find such arguments unconvincing. As a general matter, PHMSA proposes and assesses civil penalties on a case-by-case basis, depending upon the facts and circumstances presented in each case and the application of the assessment criteria set forth in 49 C.F.R. § 190.225. Respondent's citation of another case that may be "similar" to the present case does not acknowledge the reality that each case presents unique facts.

Moreover, I see no legal necessity to impose uniform penalties or remedies for similar violations. The Supreme Court has held that absent a statutory provision to the contrary, "uniformity of sanctions for similar violations" is not required.¹⁶ Neither the Pipeline Safety Laws nor the implementing regulations require uniformity of penalties for similar violations. Not only is PHMSA not legally required to adhere to identical remedies, it would be impracticable to compare the factual circumstances of every past case when proposing or assessing penalties.¹⁷

¹⁴ *Id.*

¹⁵ *In the Matter of ConocoPhillips Pipe Line Company*, CPF No. 5-2011-5014, December 19, 2011. PHMSA final orders are accessible on the agency's website at <http://primis.phmsa.dot.gov/comm/reports/enforce/Actions>.

¹⁶ *See Butz v. Glover Livestock Commission Company, Inc.*, 411 U.S. 182, 186-87 (1973).

¹⁷ *In the Matter of ExxonMobil Pipeline Company*, CPF No. 4-2004-5004, May 18 2009.

In the *ConocoPhillips* case cited by Respondent, the operator failed to have a device to record the discharge pressure at the pump station; therefore, the compliance order required it to provide one. In contrast, NuStar used Pipeline Certificate forms that required manifold pressures to be recorded but the company failed to follow its own procedures requiring documentation of discharge pressures. The differing facts and circumstances of the two cases raise different gravity and risk considerations, and therefore resulted in different remedies being used to ensure future compliance.

Lastly, the proposed penalty in the instant case is based partially on NuStar's apparent awareness of the regulatory requirement; the record shows that some of the records in question included discharge pressure readings, while others did not. Finally, PHMSA also took into consideration Respondent's unique history of prior offenses.¹⁸

Accurate and complete discharge pressure readings are required to ensure safety by preventing over-pressuring of the pipeline outside the facility, including locations where the line crosses public roads. Given all of the penalty criteria outlined above, I find that the proposed penalty in this case is reasonable and fully supported by the record. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$10,700 for violation of 49 C.F.R. § 195.404(b)(1).

Item 2: The Notice proposed a civil penalty of \$24,100 for Respondent's violation of 49 C.F.R. § 195.404(c)(3), for failing to maintain 51 right-of-way inspection records for at least two years. Respondent requested a reduction in the proposed civil penalty, suggesting that the correct number of ROW inspections not properly documented was 46, rather than 51.

As discussed above, I found that the difference between the number of inadequate records alleged in the Notice and the number acknowledged by NuStar was immaterial for purposes of determining a violation. Likewise, I have reviewed the penalty calculation for this Item and determined that even if the lower number of disputed records were used, it would not affect the amount of the proposed penalty since the number of records involved was so large. In addition, the duration of the violation was from April 19, 2008, until PHMSA's inspection on April 19, 2010, approximately 730 days. In terms of culpability, Respondent knew of its responsibility to maintain the required records. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$24,100 for violation of 49 C.F.R. § 195.404(c)(3).

Item 3: The Notice proposed a civil penalty of \$24,100 for Respondent's violation of 49 C.F.R. § 195.404(c)(3), for failing to maintain inspection records for each mainline valve located at the Linden Terminal for at least two years. Respondent acknowledged that the company failed to provide mainline valve inspection documentation for CYs 2008 and 2009 on the "Marine to Inland" pipelines. As discussed above, I found that NuStar failed to maintain proper records for these lines and its LIN-STA-10 pipeline, but not the Buckeye Transfer line.

¹⁸ In the Matter of *NuStar Pipeline Operating Partnership, L.P.*, Final Order (CPF No. 3-2011-5005) (December 29, 2011); and *NuStar Pipeline Operating Partnership, L.P.*, Final Order (CPF No. 3-2008-5013) (September 13, 2010).

The company argued that the proposed penalty should be reduced by 30 percent.¹⁹

I disagree. Given the number of missing inspection records and the number of valves that were not inspected over a two-year period, even with credit for the documentation submitted, the number of separate violations is so significant that no penalty reduction is warranted. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$24,100 for violation of 49 C.F.R. § 195.404(c)(3).

Item 5: The Notice proposed a civil penalty of \$26,700 for Respondent’s violation of 49 C.F.R. § 195.573(a)(1), for failing to conduct tests on CP pipelines at least once each calendar year, but with intervals not exceeding 15 months. NuStar did not dispute the allegation of violation but requested that PHMSA reconsider the magnitude of penalty given the company’s dedication to “ensuring safety, regulatory compliance, and asset preservation through properly functioning [CP] systems.” As an illustration, NuStar proffered that it had invested over \$150,000 in capital improvements to the terminal’s CP system over the past two years. Respondent also stated that it already spent over five times the proposed penalty amount in upgrades to its cathodic protection system.²⁰

While such measures may reflect a sincere and effective effort to improve safety, they do not constitute a basis for mitigating a penalty imposed for multiple, significant safety violations that occurred prior to an accident. PHMSA has indeed recognized a “good faith” defense for actions voluntarily taken by an operator before a violation occurs to achieve regulatory compliance but has not generally given credit for corrective actions taken in response to an accident or a pending enforcement proceeding.²¹ In this case, I find that the actions taken by NuStar were largely ones that any reasonable and prudent operator would have taken to protect its facilities and operating personnel and do not constitute a basis for reducing a penalty.

Cathodic protection can limit external corrosion on buried pipelines through the application of direct electric current to the metal of the pipeline. Protection is achieved when current flows to the metal in an amount sufficient to prevent the loss of metal from the pipeline to the surrounding environment. If insufficient current is provided, corrosion can result. Accurate and timely CP information enables an operator to take action to remedy inadequate cathodic protection. I find the nature, circumstances, and gravity of NuStar’s failure to conduct tests on CP pipelines within the required interval support assessment of the proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$26,700 for violation of 49 C.F.R. § 195.573(a)(1).

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 **\$85,600**.

¹⁹ Response at 4.

²⁰ Response at 5.

²¹ E.g., *In the Matter of AGL Resources, Inc.*, Final Order, CPF No. 2-2006-3003 (July 7, 2009); and *Panhandle Eastern Pipeline Company*, Final Order, CPF No. 3-2008-1002 (June 17, 2011).

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 \$85,600 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.

WARNING ITEM

With respect to Item 4, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this is considered to be a warning item. The warning was for:

49 C.F.R. § 195.404(c)(3) (**Item 4**) — Respondent's alleged failure to maintain records for each inspection and test performed on firefighting equipment for at least two years at the Linden Terminal. Specifically, the Notice alleged that NuStar failed to provide any documentation verifying that a field storage tank used to fight fires at the Linden Terminal was in proper operating condition.

NuStar presented information in its Response showing that it had taken certain actions to address the cited item. If OPS finds a violation of this provision in a subsequent inspection, Respondent may be subject to future enforcement action.

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, 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 [CPF No.: 1-2011-5011] are effective upon service in accordance with 49 C.F.R. § 190.5.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued