

August 24, 2017

Mr. John Roller  
Vice President, Terminal Operations  
NuStar Terminals Operations Partnership, LP  
19003 IH-10 West  
San Antonio, TX 78257

**Re: CPF No. 1-2015-5015**

Dear Mr. Roller:

Enclosed please find the Final Order issued in the above-referenced case. It withdraws the allegation of violation. This case is now closed. Service of the Final Order by certified mail is effective upon the date of mailing as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Director, Eastern Region, Office of Pipeline Safety, PHMSA  
Mr. Michael Dillinger, Senior Counsel, 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. 1-2015-5015
	)	
Respondent.	)	
	)	

**FINAL ORDER**

On August 26-28, 2014, 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 Terminals Operations Partnership, LP (NuStar or Respondent), in Linden, New Jersey. NuStar is a subsidiary of NuStar Energy, LP, a publicly-traded limited partnership based in San Antonio, Texas, with approximately 8,417 miles of pipeline and 90 terminal and storage facilities that transport hazardous liquids, including crude oil, refined petroleum products, propane, and anhydrous ammonia.<sup>1</sup>

As a result of the inspection, the Director, Eastern Region, OPS (Director), issued to Respondent, by letter dated September 10, 2015, 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. § 195.432(b) and proposed assessing a civil penalty of \$54,700 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation or face potential enforcement action.

NuStar responded to the Notice by letter dated October 5, 2015 (Response). NuStar contested the allegation and requested a hearing. A hearing was subsequently held on February 17, 2016, in West Trenton, New Jersey. At the hearing, Respondent was represented by counsel.

**WITHDRAWAL OF ALLEGATION**

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b), which states, in relevant part:

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<sup>1</sup> Pipeline Safety Violation Report (Violation Report), (September 10, 2015) (on file with PHMSA), at 1.

**§ 195.432 Inspection of in-service breakout tanks.**

(a)...

(b) Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks according to API Std 653 (except section 6.4.3, Alternative Internal Inspection Interval) (incorporated by reference, see §195.3). However, if structural conditions prevent access to the tank bottom, its integrity may be assessed according to a plan included in the operations and maintenance manual under §195.402(c)(3). The risk-based internal inspection procedures in API Std 653, section 6.4.3 cannot be used to determine the internal inspection interval.

The Notice alleged that Respondent violated 49 C.F.R. § 195.432(b) by failing to inspect the physical integrity of two in-service atmospheric steel aboveground breakout tanks in accordance with API Standard 653, incorporated by reference in Part 195. Specifically, the Notice alleged that with respect to Tanks 32002 and 21408, NuStar failed to comply with section 12.5 of API 653 which states: “Where settlement is anticipated, a tank receiving a hydrostatic test shall have the foundation checked for settlement.” OPS noted the absence of shell-elevation measurements in its review of Respondent’s Storage Tank Hydrostatic Test Records for Tank 32002, dated February 19, 2013, and Tank 21408, dated January 28, 2014. These hydrostatic tests were done following certain repairs being made to these tanks.<sup>2</sup>

In its Response and at the hearing, NuStar pointed to the plain language of section 12.5, which states that performing a check for settlement is only required “where settlement is anticipated” and explained that it did not anticipate settlement on either tank and had no reason to do so since the tanks’ foundations were already loaded and previous settlement out-of-plane measurements were acceptable under API 653.<sup>3</sup>

At the hearing, NuStar began by pointing out that the Out-of-Service Inspections performed on Tank 32002 on October 25, 2012, and December 19, 2012, by DJA Inspection Services indicated that “The out-of-plane settlement is acceptable per API-653.”<sup>4</sup> Respondent noted that both of the tanks had been routinely monitored for settlement for many years and had never experienced any history of settlement issues.

NuStar then addressed the nature of the tank-repair work. According to NuStar’s records, the repair to Tank 32002 involved replacement of the outer 15 feet of floor plate and the replacement of sand with grout. The repair to tank 21408 involved air-lifting the tank and rebuilding the pile cap. At the hearing, NuStar conceded that if a tank is lifted to re-level the tank, anticipation of settlement would be called for but argued that in this case the tank was lifted to inspect the pile cap and it was not re-leveled. NuStar provided an Affidavit in which Gerald Maher, Tank Integrity Manager for NuStar’s Eastern Region, testified about the basis for his conclusion that

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<sup>2</sup> NOPV, at 2.

<sup>3</sup> Response, at 1.

<sup>4</sup> Response Exhibit 3.

he did not anticipate settlement on either tank. Notably, Mr. Maher stated that “All foundation or pile-related work was to the pile cap area and was cosmetic or preventative. This did not affect the load bearing capacity of the piles or foundation.”<sup>5</sup> He further stated that “None of the repairs would add any weight or change the tank shapes” and noted that the tank function and types of products stored were not changing.<sup>6</sup>

NuStar also provided a written analysis by Gary W. Powers, P.E., of Powers Engineering & Inspection, Inc., an experienced API 653 inspector. In his analysis, Mr. Powers explained that among tank foundation designs, the pile cap is the foundation design that provides the best performance for limiting settlement.<sup>7</sup> He further stated that “We have conducted AST shell settlement surveys on over 200 pile cap type foundations. When there have been repairs similar to those in this matter and even more extensive than those in this matter, none of these over 200 foundations have experienced differential settlement that would require settlement monitoring.”<sup>8</sup> Mr. Powers also stated his opinion that after reviewing the repairs, “neither I, nor a reasonable API 653 Authorized Inspector, would have anticipated settlement.”<sup>9</sup>

OPS did not dispute the expertise of Mr. Maher (who attended the hearing) or Mr. Powers and did not present any evidentiary material that would outweigh the information and testimony provided by NuStar on the issue of whether the type of repairs performed on the tanks were likely to introduce settlement.

Finally, NuStar demonstrated that subsequent out-of-plane settlement surveys performed on the tanks on November 2, 2015, showed that no settlement beyond acceptable limits had occurred following the repairs, which is consistent with NuStar’s original determination that, based on the nature of the repairs, there was no reason to anticipate settlement.<sup>10</sup>

OPS contended that even if NuStar did not anticipate settlement and no settlement occurred, at a minimum it should have prepared a written record of performing an analysis concerning whether settlement was anticipated. The language and structure of section 12.5, however, does not support requiring a technical analysis for something that an operator does not reasonably anticipate will occur. While it may have been advisable for NuStar to have created and maintained such a record to help it avoid compliance proceedings such as this, OPS did not cite any deficiency in Respondent’s operating and maintenance procedures for creating written records nor did the Notice allege the failure to maintain a required record.

Accordingly, after considering all of the evidence and the legal issues presented, I find that OPS did not present evidence proving that settlement should have been anticipated, which is a

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<sup>5</sup> Maher Affidavit, paragraph 5(f).

<sup>6</sup> Maher Affidavit, paragraph 5(g)-(h).

<sup>7</sup> NuStar Hearing Presentation, at 12.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> NuStar Hearing Presentation, at 14.

prerequisite under API 653 to trigger the requirement to check the tank foundations for settlement. Based upon the foregoing, I hereby order that the allegation of violation be withdrawn.

### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>11</sup> 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; 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 civil penalty of \$54,700 for the alleged violation of 49 C.F.R. § 195.432(b).

As discussed above, I have withdrawn the alleged violation. Therefore, the proposed civil penalty associated with this item is also withdrawn.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to the alleged violation of 49 C.F.R. § 195.432(b). 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.

As discussed above, I have withdrawn the alleged violation. Therefore, the proposed compliance order is also withdrawn.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

August 24, 2017

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued

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<sup>11</sup> These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).