



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

FEB - 5 2009

1200 New Jersey Ave., SE
Washington, DC 20590

Mr. Todd Denton
Vice President, Regional Operations
NuStar Energy, L.P.
2330 N. Loop 1604 West
San Antonio, TX 78248-4512

Re: CPF No. 3-2007-5002

Dear Mr. Denton:

Enclosed is the Final Order issued in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$38,000, and specifies actions that need to be taken by NuStar to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Central Region, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document 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: Ivan A. Huntoon, Director, Central Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 0390 0005 6163 2621]

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

In the Matter of)

NuStar Energy, L.P.)
(f/k/a Valero, L.P.),)

Respondent.)
_____)

CPF No. 3-2007-5002

FINAL ORDER

Between May 15-17, June 12-14, June 19-22, and August 21-24, 2006, 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 safety inspection of the interstate hazardous liquid pipeline facilities of Valero, L.P. (Valero or Respondent), located in Missouri, Illinois, Indiana, Iowa, and Nebraska, and known as the Kaneb Pipeline. On or around April 1, 2007, Valero changed its name to NuStar Energy, L.P., and currently operates the line through its subsidiary, NuStar Pipeline Operating Partnership, L.P. NuStar Energy is a major energy company operating over 4,000 miles of crude oil and petroleum product pipelines throughout the United States.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated February 8, 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 Respondent had committed various violations of 49 C.F.R. Part 195, assessing a civil penalty of \$38,000, and requiring Valero to take certain measures to correct the violations. The Notice also proposed finding that Respondent had committed another probable violation of 49 C.F.R. Part 195 and warning Valero to take appropriate corrective action or be subject to future enforcement action.

By letter dated March 28, 2007, Valero¹ responded to the Notice (Response). The company contested the allegations in part, requested that OPS reduce or eliminate the civil penalty, and asked that OPS modify or withdraw the compliance order. Respondent did not request a hearing and therefore has waived its right to one.

¹ Valero responded to the Notice through its then-operating subsidiary, Kaneb Pipe Line Operating Partnership, L.P.

FINDINGS OF VIOLATION

Item 2: The Notice alleged that Respondent violated 49 C.F.R. § 195.412(a), which states:

§ 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 Valero failed to conduct adequate inspections of the surface conditions of its anhydrous ammonia pipeline rights-of-way in the following four locations:

- 1) At four road crossings between Mile Posts (MP) 41.4 and 45.4 near Mountain View, Missouri;
- 2) MP 47.9 near Litchfield, Illinois;
- 3) MP 115.1 near Trillia, Illinois; and
- 4) MP 33.0 near Arlington, Nebraska.

Specifically, the Notice alleged that Valero relied upon aerial patrols to inspect these rights-of-way but was unable to effectively “inspect the surface conditions on or adjacent to” them from the air due to overgrown vegetation.

In its Response, Valero contested the allegation, arguing (1) that although the rights-of-way might appear to be obstructed from the ground, they were clearly visible from the air; 2) that its current patrols were adequate to identify third-party encroachments; and 3) some vegetation in the rights-of-way might be useful in aerial inspections.²

Upon review, I find these arguments unpersuasive. Using aerial patrols for these four rights-of-way as the sole method of inspection was inappropriate under § 195.412(a). The purpose of that regulation is to ensure that operators regularly inspect the surface conditions of their pipeline rights-of-way, by *appropriate* means, in order to detect encroachments and various other threats to the integrity of their facilities. If an operator cannot view surface conditions, then aerial patrols are ineffective. Respondent’s rights-of-way in these locations were covered in dense overgrowth, as shown in Valero’s own photographs of the area.³ Relying solely on aerial patrols is inappropriate in areas where such overgrowth prevented Valero from observing surface conditions and potential damage to its facilities or encroachments to its rights-of-way. Respondent could have used ground patrols as an additional method of inspection but elected not to do so.

² In its Response, Valero wrote, “...[I]t may actually be preferable to maintain some vegetation in the vicinity of the pipeline in order to help identify small leaks. As noted, ammonia may not provide a direct visual result; however, ammonia leaks can affect the foliage in the vicinity, meaning that it is easier for the pilot to visually identify small leaks through foliage changes rather than through direct visual observation.” Response, at 2.

³ Response, Exhibit A.

Respondent's assertion that a right-of-way for an anhydrous ammonia pipeline does not need to be cleared as extensively as a petroleum pipeline is not supported by the regulations.

The pipeline safety regulations require patrols in order to reduce the risk of third-party encroachments and other threats to the pipeline in advance of a leak. The regulations do not carve out exceptions to the required patrols based on the type of hazardous product traveling through the pipe. Although a release of anhydrous ammonia might alter the color of foliage, relying on reports of an odor or a discoloration would only identify existing leaks but not address unauthorized activities along the right-of-way.

Finally, Respondent's post-inspection actions cannot serve to cure or reduce the violation. At the time of the inspection, these four rights-of-way were obscured by overgrown vegetation.

Although Respondent has since cleared them, as depicted in the photographs provided to OPS, Valero had an ongoing obligation to keep its rights-of-ways clear without necessitating a visit from an OPS inspector. Accordingly, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to adequately inspect the surface conditions on or adjacent to its pipeline rights-of-way in the four locations described above.

These findings 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.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I 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 \$38,000 for Respondent's violations of 49 C.F.R. § 195.412(a), as set forth in Item 2 of the Notice and discussed more fully above. In its Response, Valero requested that OPS review the penalty assessment and either waive or reduce the amount on account of the company's post-inspection actions to clear the rights-of-way, its alleged good faith compliance with the regulations, and its proactive measures to improve its right-of-way program. Respondent also asserted that no adverse environmental impacts had occurred on account of the alleged violation.

I find these arguments unpersuasive for several reasons. First, while Respondent may have acted promptly to correct the violations after the inspection occurred, Respondent failed to regularly inspect its rights-of-way by an appropriate method, as required by § 195.412(a). The rights-of-way should have been either patrolled by additional methods or kept cleared for aerial inspection without the necessity of an inspector's visit.

As for Respondent's good faith argument, PHMSA does indeed consider an operator's good faith efforts to achieve compliance at the time the agency proposes a civil penalty amount. For example, if an operator has taken reasonable steps to comply with a particular regulation but such efforts are subsequently deemed insufficient as the result of an inspection, PHMSA may consider such actions as a mitigating factor in calculating a civil penalty. Similarly, if an operator acts on the basis of an incorrect, but otherwise reasonable, interpretation of a regulation, the agency may propose a lower penalty than would otherwise be assessed. In this case, however, Respondent failed to demonstrate that its patrols were conducted in a good faith effort to achieve compliance. Respondent was aware of the overgrowth in the rights-of-way yet neglected to take appropriate pre-inspection actions, either by adding ground patrols or other inspection methods or by more thoroughly or by frequently clearing the rights-of-way. In addition, I would note that Valero was issued a warning in 2004 to clear its rights-of-way on this same line.⁴

While it is fortunate that a release did not occur on the Kaneb Pipe Line while the rights-of-way were covered by vegetative growth, this is not a basis upon which to reduce or eliminate the civil penalty. Without consistent and effective patrols of the surface conditions of pipeline rights-of-way, operators may be unaware of third-party encroachments or other damage that could lead to pipeline accidents. It is particularly important that Respondent clear the Kaneb Pipeline rights-of-way since many of them are located near roads, highways, and rivers. In addition, one of the four rights-of-way cited above is located at a foreign pipeline crossing, thereby further increasing the need for appropriate surface inspections.

Based upon the foregoing, I find that Respondent has not demonstrated any circumstances justifying a reduction or waiver of the civil penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$38,000.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment 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, OK 73125; (405) 954-8893.

Failure to pay the \$38,000 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 United States District Court.

⁴ CPF No. 3-2004-5034W.

COMPLIANCE ORDER

The Notice also proposed a compliance order with respect to Item 2 for violation of 49 C.F.R. § 195.412(a). 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. Pursuant to the authority of 40 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent, now known as NuStar Energy, L.P., is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations. Respondent must-

1. Provide a plan and schedule of action for clearing the rights-of-way where aerial patrolling is utilized. The plan must be provided to the Director, Central Region, Pipeline and Hazardous Materials Safety Administration, 901 Locust Street, Room 462, Kansas City, MO 64106.
2. Identify sections of pipeline rights-of-way along NuStar's anhydrous ammonia line in Missouri, Illinois, Indiana, Iowa and Nebraska that are overgrown and will remain overgrown for a period of time while awaiting clearing. For these sections, Respondent must provide an alternative means to aerial patrolling in order to comply with § 195.412.
3. Provide the plan and schedule to the Director within 30 days from the date of the receipt of the Final Order.
4. Implement the plan and schedule required by Items 1 and 2 of this Compliance Order within 60 days from the date of the receipt of the Final Order.
5. Maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director, Central Region. Costs shall be reported in two categories; 1) total cost associated with preparation/revision of plans, procedures, studies, and analyses and 2) total costs associated with replacements, additions, and other changes to pipeline infrastructure.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in administrative assessment of civil penalties not to exceed \$100,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

WARNING ITEM

With respect to Item 1, the Notice alleged a probable violation of Part 195 but did not propose a civil penalty or compliance order for this item. Therefore, this item is considered to be a warning item. The warning was for:

49 C.F.R. § 195.402(d)(5) (Notice Item 1) — Valero’s alleged failure to follow its operating and maintenance procedures by neglecting to periodically review personnel responses during abnormal operating conditions for the years 2004 and 2005.

Valero did not present any explanation in its Response regarding this allegation. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that a probable violation of 49 C.F.R. § 195.402(d)(5) (Notice Item 1) occurred as of the date of the inspection. NuStar Energy is hereby advised to review and correct such conditions. In the event that OPS finds a violation for this item in a subsequent inspection, NuStar Energy may be subject to future enforcement action.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent’s receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of this order, including any required corrective action, shall remain in full force and effect unless the Associate Administrator, upon request, grants a stay. The terms and conditions of this Final Order shall be effective upon receipt.

William H. Guts
for

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

FEB - 5 2009
Date Issued
