



RECEIVED MAY 23 2011

May 20, 2011

Mr. David Barrett
Director, Central Region
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Room 462
Kansas City, MO 64106

RE: CPF No. 3-2011-5005 Response

Dear Mr. Barrett:

NuStar Pipeline Operating Partnership L.P. (NuStar) received a Notice of Probable Violation (NOPV), Proposed Civil Penalty and Proposed Compliance Order dated April 21, 2011, from the Central Region of the Pipeline and Hazardous Materials Safety Administration (PHMSA). Enclosed in the letter are the *Response Options for Pipeline Operators in Compliance Proceedings*. For the Notice of Probable Violation that contains the Civil Penalty, NuStar will follow I.a.3. which states; "If you are contesting one or more of the items in the Notice but are not requesting an oral hearing, submit a written response to the allegations and/or seek elimination of the proposed civil penalty". Also, for the Compliance Order, NuStar will follow I.b.3. which states; "If you are contesting the proposed compliance order but are not requesting an oral hearing, submit written explanations, information, or other materials in answer to the allegations in the Notice and stating your reasons for objecting to the proposed compliance order items in whole or in part". Please accept the following response for the above referenced NOPV, Proposed Civil Penalty and Proposed Compliance Order. After considering the below explanations, we respectfully request you dismiss the disputed allegations. In addition, we respectfully request you lower the proposed penalty amount after considering the below explanations and mitigating circumstances.

The following will address each item found in the NOPV as described in the April 21, 2011 letter:

1. *§195.50 Reporting accidents*

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

(b) Release of 5 gallons (19 liters) or more of a hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:

- (1) Not otherwise reportable under this section;*
- (2) Not one described in Sec. 195.52(a)(4);*
- (3) Confined to company property or pipeline right-of-way; and*
- (4) Cleaned up promptly;*

PHMSA alleges that NuStar did not report three releases of petroleum products greater than 5 gallons in volume that occurred during pipeline system operations. NuStar disputes these allegations and maintains that the releases were not required to be reported because they were releases of less than 5 barrels



resulting from pipeline maintenance activity and met the requirements of §195.50(b)(1)-(4). Please refer to Exhibit A for detailed descriptions on why each incident was believed to be “resulting from a pipeline maintenance activity”.

2. *§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.

This item has been identified as a Warning Item and therefore does not require a written response.

3. *§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 Sec. 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 these 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.

PHMSA alleges that NuStar did not conduct corrosion control monitoring tests at various test stations from calendar year 2006 through calendar year 2009. NuStar disputes the allegations regarding test stations at MP 154.31 10” and MP 172.69 10”. Please see the detailed explanations below in support of these disputes. NuStar does not dispute allegations regarding test stations at MP 165.94 16”, MP 172.69 16”, and MP 225.96 10”.

MP 154.31 10” (Ute Road) was not tested during the 2008 annual survey on 10/27/2008 due to a “missing” test station.

The MP 154.31 10” (Ute Road) test station was replaced on 10/24/2009. A close interval survey was conducted through this area on 09/09/2009. The cathodic protection potential measured at this location during the close interval survey was -1.210 volts (On) and -1.025 volts (Instant Off) with a remote connection. The readings taken during the close interval survey were within the inspection criteria of Part 195.

MP 172.69 10” (crossing with Kinder Morgan Pipeline) was not tested during the 2008 annual survey on 10/27/2008 due to no test lead at the crossing.

The MP 172.69 10” test point was not measured during the 2009 annual survey on 10/09/2009 due to no test lead at this location. However, a close interval survey was conducted through this area on 09/19/2009 and the cathodic protection potential measured at this location was -1.12 volts (On) and -.992 volts (Instant Off) with a remote connection. The readings taken during the close interval survey were within the inspection criteria of Part 195.

4. *§195.404 Maps and Records.*

(c) Each operator shall maintain the following records for the periods specified;

(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.



PHMSA alleges that, "NuStar did not maintain the inspection records for a overpressure safety device at the Arkansas City Pump Station for at least two years. Per 49 CFR 195.428 overpressure safety devices require periodic inspection and testing. The high pressure shutdown switch installed on and protecting NuStar's inlet piping at the Arkansas City Pump Station was reportedly inspected and tested by another party. NuStar had not acquired the documentation of the device's annual inspections. During the PHMSA's regulatory inspection it was confirmed with NuStar that the pressure rating of the incoming pipeline system (operated by another company) has a higher maximum operating pressure rating than NuStar's piping."

NuStar disputes these allegations and is providing evidence that the overpressure safety device(s) in question have been inspected and tested in compliance with 49 CFR §195.428 by qualified personnel from ConocoPhillips (COP). NuStar acknowledges that these inspection records were not available at the time of the inspection, however, have since been obtained and are provided in Exhibit B. To prevent future occurrence, NuStar will immediately begin conducting required overpressure device inspection and testing jointly with COP, and maintaining our own documentation.

After considering the above explanations and documents in Exhibit B, we respectfully request you dismiss the disputed allegations. In addition, we respectfully request you lower the proposed penalty amount after considering the above explanations and mitigating circumstances. If NuStar can provide further information or clarification, please contact me at 316-721-7052 or by email at Gary.Koegeboehn@NuStarEnergy.com.

Sincerely,

A handwritten signature in black ink that reads "Gerald R. Koegeboehn". The signature is written in a cursive style with a large, prominent "G" and "K".

Gerald Koegeboehn
Vice President/General Manager

cc: Todd Denton, Vice President Pipelines & Terminal Operations
Dan Tibbits, Regional HSE Director

Enclosures

NuStar Pipeline Operating Partnership L.P.
NOPV, Proposed Civil Penalty and Proposed Compliance Order
CPF 3-2011-5005
Exhibit A

The three incidents that are described in the above-referenced letter are all associated with the interpretation of maintenance activity; therefore, NuStar offers the following:

A Statement Regarding Maintenance Activities

In 2002, PHMSA published a Notice of Proposed Rulemaking (NPRM) [66 FR 15681] to change the hazardous liquid accident reporting requirement from a threshold of 50 barrels to 5 gallons. In addition, the NPRM also proposed to exempt from reporting a spill of less than 5 barrels attributable to a maintenance activity that also met additional criteria relating to consequences (i.e. no fire, injury, etc.).

As explained in the preamble of the final rule [67 FR 831], spills of less than 5 barrels “resulting from a pipeline maintenance activity” are exempted from reporting because “information on such releases would not be helpful in accident trending analysis”. Unfortunately, PHMSA gave very little additional guidance as to what “maintenance activities” would qualify under this exemption, and which would not. One commenter specifically requested that “criteria for the non-reporting of releases of 5 gallons or more but less than 5 barrels may need to be better defined in the preamble to the final rule”. However, PHMSA declined to further define the meaning of “resulting from a pipeline maintenance activity”. As such, operators were left to interpret for themselves which spills met the exemption criteria as “resulting from a pipeline maintenance activity”.

From an operator’s standpoint, there is little reason to not report all spills, regardless of their relation to a “maintenance activity”. Spills meeting the less than 5 barrel criteria with no additional consequences (i.e. fire, injury, etc.) are only required to fill out the “short form” spill report. The burden of such report is minimal. However, most operators choose to honor the intent of the “maintenance activity” exemption and to exclude from reporting those spills which would likely provide no beneficial accident trending data and which would otherwise taint the data analysis efforts of PHMSA.

If PHMSA begins to take an aggressive enforcement stance on accident reports that were in good faith examined by the operator and determined to meet the criteria as “resulting from a pipeline maintenance activity”, then many operators may be forced to begin reporting all spills of greater than 5 gallons regardless of their relation to maintenance activities. The risk mitigation to the operator would far outweigh the additional burden for reporting. Unfortunately, this may also result in limiting the usefulness of the data being collected by PHMSA for accident trend analysis, which is the exact situation the “maintenance activity” exemption was intended to relieve.

As you consider the information provided below on each of the accident scenarios in question, we ask that you also consider our good faith effort to analyze and interpret each situation for its relationship to a maintenance activity. Even if you disagree with our determination on a particular situation, we ask that you at least consider our good faith effort to meet the intent of

the regulation, and realize that there is no financial benefit to NuStar for not reporting these minor spills.

1. §195.50 Reporting accidents

The first release (NuStar Incident ID: 466) occurred on December 1st, 2007 at the Geneva Station. The spill occurred during a tank switching operation, causing a release of 50 gallons.

NuStar response:

The pipeline manifold area was undergoing a maintenance activity that consisted of tying in all Block & Bleed valves to a common header which would carry product directly to a sump if a Block & Bleed valve were left open. The maintenance activity was not completed at this time and had the header pipe discharging into a 5 gallon bucket rather than the sump (see attached picture). During the morning of Saturday, December 1, the Geneva operator began to prepare at 11:15 a.m. for pipeline/tank activities scheduled to begin at around 12:15 p.m. Prior to opening the 30-4 valve, the operator failed to close the associated block and bleed valve thereby allowing product to escape the valve body. Under normal circumstances the product flowing through the block and bleed valve would escape to the ground near the operator's feet, however, due to the maintenance activity associated with the manifold area, the valve had been connected to a pipe which carried the product some distance away to the bucket and was initially unnoticed. The incident resulted in a 50 gallon spill to the ground in the manifold area. Cleanup was completed immediately and further monitoring was undertaken to ensure no further contamination.

Although this release occurred during normal operational activities at the terminal facility, the ongoing maintenance activity allowed the release to go undetected for a short period of time. NuStar concedes that this event is less likely to meet NuStar's current and more conservative interpretation of "resulting from a pipeline maintenance activity". However, NuStar respectfully requests that PHMSA consider our good faith effort in 2007 to make the determination at that time, and in turn make mitigative reductions to the proposed penalty. As evidence that NuStar was not intentionally attempting to circumvent notification requirements, please consider that NuStar made proper notification to the Nebraska Department of Environmental Quality in accordance with state regulations.

The second release (NuStar Incident ID: 4368) occurred on October 6th, 2009 at the Elm Creek Pump Station. The spill occurred when a sump overflowed releasing 89 gallons of fuel oil.

NuStar response:

NuStar personnel had performed pipeline maintenance inspections on equipment at the Elm Creek Pump Station. After completion of the maintenance inspections and restart of the pipeline, the high level sump alarm was detected by the control center. The personnel were dispatched back to the pump station and discovered that the sump had overflowed. Further investigation revealed that a valve had been left partially open while conducting the maintenance inspections, which allowed the sump to slowly fill and overflow. The released product was immediately

cleaned up and resulted in no off-site impacts. This incident released less than 5 barrels of product and was directly resulting from the pipeline maintenance inspection activities conducted earlier in the day. This release was reported to the Nebraska Department of Environmental Quality (NDEQ), in accordance with state regulations.

The third release (NuStar Incident ID: 5345) occurred on January 22, 2010 at the El Dorado Station. The spill occurred during start up of a mainline pump, causing a release in the order-of-magnitude of 50 gallons.

NuStar response:

NuStar maintenance personnel were repairing the motor to the #2 mainline pumping unit. As part of the normal maintenance procedures, the unit was started-up to test for proper installation and alignment. During this start-up test, product began filling the sump at a rapid rate and began discharging out of the sump relief vent stack. Maintenance personnel immediately shut down the pump. Prior to re-starting the unit, maintenance personnel made additional adjustments to the relief valve settings and case pressures. These additional adjustments allowed for a successful pump re-start test. The released product was immediately cleaned up and resulted in no off-site impacts. This incident released less than 5 barrels of product and was directly resulting from the pipeline maintenance activity of repairing and testing of the #2 mainline pumping unit.



Geneva Block & Bleed Manifold System



Pressure Control Device Inspection Form

LOCATION: Ark City Station

PIPELINE NAME: NuStar 10" Line #1

DATE (M/D/Y)	DEVICE TYPE ⁽¹⁾	DOT or non-DOT	TAG NO.	PRODUCT SERVICE	SET PRESSURE	AS FOUND PRESS	AS LEFT PRESS	OPERATIONAL & MECHANICAL CONDITION ⁽²⁾	BLOCK VALVES SEALED OPEN (Y/N)	REMARKS	PERFORMED BY
3/18/09	Control Valve	DOT	CV 201	NON HVL	900 psi	900 PSI	900 PSI	Adequate	Y		[Signature]
3/18/09	Mainline Pressure Transmitter	DOT	PX 202	NON HVL	0-2500 psi	0-2500 PSI	0-2500 PSI	Adequate	Y		[Signature]
3/18/09	Mainline Pressure Switch	DOT	PSH 207	NON HVL	1850 psi	1850 PSI	1850 PSI	Adequate	Y		[Signature]
3/18/09	RTU #10/11 Ark City	DOT	#10/11	NON HVL	900 psi	900 PSI	900 PSI	Adequate	N/A		[Signature]
3/18/09	Meter Pressure Switch	DOT	PSH 208	NON HVL	900 psi	900 PSI	900 PSI	Adequate	Y		[Signature]
3/18/09	Meter Pressure Transmitter (inside NuStar Fence)	DOT	PX 204	NON HVL	0-1000 psi	0-1000 PSI	0-1000 PSI	Adequate	Y		[Signature]
3/18/09	Meter Pressure Switch (inside NuStar Fence)	DOT	PSH 209	NON HVL	900 psi	900 PSI	900 PSI	Adequate	Y		[Signature]

(1) RELIEF VALVE(RV), DISCHARGE CONTROLLER(DC), DISCHARGE PRESSURE TRANSMITTER/SWITCH(PT), CONTROL VALVE(CV).
(2) ADEQUATE OR NEEDS REPAIRS. If correction is required, specify what correction is necessary, and if necessary before continued operation.

Distribution:



Pressure Control Device Inspection Form

LOCATION: Ark City Station

PIPELINE NAME: NuStar 10" Line #1

DATE (M/D/Y)	DEVICE TYPE(1)	DOT or non-DOT	TAG NO.	PRODUCT SERVICE	SET PRESSURE	AS FOUND PRESS	AS LEFT PRESS	OPERATIONAL & MECHANICAL CONDITION(2)	BLOCK VALVES SEALED OPEN (Y/N)	REMARKS	PERFORMED BY
3/16/10	Control Valve	DOT	CV 201	NON HVL	900 psi	900 PSI	900 PSI	Adequate	Y		Alan Parker
3/16/10	Mainline Pressure Transmitter	DOT	PX 202	NON HVL	0-2500 psi	0-2500 PSI	0-2500 PSI	Adequate	Y		Alan Parker
3/16/10	Mainline Pressure Switch	DOT	PSH 207	NON HVL	1850 psi	1850 PSI	1850 PSI	Adequate	Y		Alan Parker
3/16/10	RTU #10/11 Ark City	DOT	#10/11	NON HVL	900 psi	900 PSI	900 PSI	Adequate	N/A		Alan Parker
3/16/10	Meter Pressure Switch	DOT	PSH 208	NON HVL	900 psi	900 PSI	900 PSI	Adequate	Y		Alan Parker
3/16/10	Meter Pressure Transmitter (inside NuStar Fence)	DOT	PX 204	NON HVL	0-1000 psi	0-1000 PSI	0-1000 PSI	Adequate	Y		Alan Parker
3/16/10	Meter Pressure Switch (inside NuStar Fence)	DOT	PSH 209	NON HVL	900 psi	900 PSI	900 PSI	Adequate	Y		Alan Parker

(1) RELIEF VALVE(RV), DISCHARGE CONTROLLER(DC), DISCHARGE PRESSURE TRANSMITTER/SWITCH(PT), CONTROL VALVE(CV).
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Pressure Control Device Inspection Form

LOCATION: Ark City Station

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DATE (M/D/Y)	DEVICE TYPE ⁽¹⁾	DOT or non-DOT	TAG NO.	PRODUCT SERVICE	SET PRESSURE	AS FOUND PRESS	AS LEFT PRESS	OPERATIONAL & MECHANICAL CONDITION(2)	BLOCK VALVES SEALED OPEN (Y/N)	REMARKS	PERFORMED BY
3/21/2011	Control Valve	DOT	CV 201	NON HVL	900 psi	900 psi	900 psi	Adequate	Y		Alan Barker
3/21/2011	Mainline Pressure Transmitter	DOT	PX 202	NON HVL	0-2500 psi	0-2500 psi	0-2500 psi	Adequate	Y		Alan Barker
3/21/2011	Mainline Pressure Switch	DOT	PSH 207	NON HVL	1850 psi	1850 psi	1850 psi	Adequate	Y		Alan Barker
3/21/2011	RTU #10/11 Ark City	DOT	#10/11	NON HVL	900 psi	900 psi	900 psi	Adequate	N/A		Alan Barker
3/21/2011	Meter Pressure Switch	DOT	PSH 208	NON HVL	900 psi	900 psi	900 psi	Adequate	Y		Alan Barker
3/21/2011	Meter Pressure Transmitter (Inside NuStar Fence)	DOT	PX 204	NON HVL	0-1000 psi	0-1000 psi	0-1000 psi	Adequate	Y		Alan Barker
3/21/2011	Meter Pressure Switch (Inside NuStar Fence)	DOT	PSH 209	NON HVL	900 psi	900 psi	900 psi	Adequate	Y		Alan Barker

Alan Barker 3/21/2011

(1) RELIEF VALVE(RV), DISCHARGE CONTROLLER(DC), DISCHARGE PRESSURE TRANSMITTER/SWITCH(PT), CONTROL VALVE(CV).
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