

December 1, 2021

VIA ELECTRONIC MAIL TO: brad.barron@nustarenergy.com

Mr. Brad Barron
President and Chief Executive Officer
NuStar Pipeline Operating Partnership, L.P.
19003 IH-10 West
San Antonio, Texas 78257

Re: CPF No. 3-2021-005-NOPV

Dear Mr. Barron:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation, assesses a civil penalty of \$75,200, and specifies actions that need to be taken by NuStar Pipeline Operating Partnership, L.P. 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. Service of the Final Order by e-mail is effective upon the date of transmission 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: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Gary Koegeboehn, Vice President of Pipeline Operations, NuStar Pipeline Operating Partnership, L.P., gary.koegeboehm@nustarenergy.com
Mr. Michael Dillinger, Senior Counsel, NuStar Pipeline Operating Partnership, L.P., mike.dillinger@nustarenergy.com

CONFIRMATION OF 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 Pipeline Operating Partnership, L.P.,)	
Respondent.)	
)	CPF No. 3-2021-005-NOPV

FINAL ORDER

On various dates between February 4 and November 5, 2020, pursuant to 49 U.S.C. § 60117, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inspected facilities and records of NuStar Pipeline Operating Partnership, L.P.'s (NuStar or Respondent) Central East Region Refined Products pipeline system in Kansas, Nebraska, Iowa, South Dakota, North Dakota, and Minnesota. NuStar has approximately 10,000 miles of pipeline and 64 terminal and storage facilities that store and distribute crude oil, refined products, renewable fuels and specialty liquids.¹

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated April 9, 2021, 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 committed three violations of 49 C.F.R. Part 195, proposed assessing a civil penalty of \$75,200 for the alleged violations, and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also included a warning item pursuant to 49 C.F.R. § 190.205. The warning item required no further action, but warned the operator to correct the probable violation or face possible future enforcement action.

NuStar responded to the Notice by letter dated May 7, 2021 (Response). NuStar contested the Notice by requesting that it be withdrawn or reduced to a warning, provided additional information regarding corrective actions it has taken in response to the allegations of violation set forth in the Notice, and alternatively requested that the proposed civil penalty be reduced based on the number of instances of violation in Item 4, among other factors. Respondent did not request a hearing and therefore has waived its right to one.

¹ NuStar Energy Website, About NuStar, *available at* <https://www.nustarenergy.com/Company?area=Company> (last accessed November 18, 2021).

FINDINGS OF VIOLATION

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

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 Respondent violated 49 C.F.R. § 195.412(a) by failing to inspect the surface conditions on or adjacent to each pipeline right-of-way using an appropriate method for inspection. Specifically, the Notice alleged that PHMSA's field inspection at MP 1.22 of the Council Bluffs/Sioux Falls pipeline segment and at MP 513.2 of the Moorhead/Roseville pipeline segment found that NuStar failed to adequately clear the right-of-way, thereby preventing effective aerial patrolling. Other appropriate means of inspecting the right-of-way had not been performed. Since the time of PHMSA's inspection, NuStar has cleared trees and vegetation from the MP 1.22 Council Bluffs/Sioux Falls pipeline segment and has added the MP 513.2 Moorhead/Roseville pipeline segment to their list of areas to be patrolled by walking.

In its Response, NuStar did not contest the allegation of violation or the evidence in support of the violation, but requested that the item be withdrawn or reduced to a warning because it "cooperated with the agency, took responsibility and . . . , since the time of inspection has corrected allegations two and three" ² NuStar further supported its request based on its "excellent safety record" and its status as a "good corporate citizen." ³

Having considered its Response, I find NuStar's corporate citizenship, enforcement history, and remediation are not grounds to withdraw the allegation or reduce it to a warning. The evidence in the record, including photos of the right-of-way, demonstrate that Respondent did not comply with § 195.412 as alleged and NuStar did not contest that the underlying allegation of violation occurred. While NuStar should be commended for its contributions to local communities, it does not negate or excuse noncompliance with a pipeline safety standard. In addition, as discussed below in the Assessment of Penalty, NuStar's compliance history was already factored in to the civil penalty in this case. Finally, correcting a violation after it has been discovered by PHMSA during an inspection similarly does not provide grounds for withdrawing the violation.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.412(a) by failing to use an appropriate method for inspection of pipeline right-of-way.

² Response, at 1.

³ *Id.*

Item 3: The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(2), which states:

§ 195.410 Line markers.

(a) Except as provided in paragraph (b) of this section, each operator shall place and maintain line markers over each buried pipeline in accordance with the following:

(1)

(2) The marker must state at least the following on a background of sharply contrasting color:

(i) The word “Warning,” “Caution,” or “Danger” followed by the words “Petroleum (or the name of the hazardous liquid transported) Pipeline”, all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with an appropriate stroke of ¼ inch (6.4 millimeters).

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

The Notice alleged that Respondent violated 49 C.F.R. § 195.410(a)(2) by failing to place and maintain right-of-way line markers that state, on a background of sharply contrasting color the word “Warning,” “Caution,” or “Danger” followed by the words “Petroleum (or the name of the hazardous liquid transported) Pipeline” in letters at least 1 inch (25 millimeters) high with the name of the operator and a telephone number (including area code) where the operator can be reached at all times. Specifically, the Notice alleged that PHMSA inspected line markers for the 10-inch and 16-inch pipelines in the Geneva Unit at the C.R.I.&P. Railroad crossing near Belleville, Kansas. Two posts for each line were observed. For the 10-inch pipeline, the post on the south side of the crossing was found missing a sign or placard and on the north side the post had an unreadable sign that was blank due to sun exposure. For the 16-inch line, the post on the south side of the crossing was found missing a sign or placard and on the north side the sign had information for the former operator (KANAB). On the Mandan Unit 10-inch pipeline running from Mandan, North Dakota to Moorhead, Minnesota, a number of signs and right-of-way markers were faded and un-readable. PHMSA observed un-readable signage on fencing at the Hay Creek valve site at MP 868.0 and right-of-way markers at MP 857.3, 845.3, 755.2, 751.2, 741.2, 731.0, 725.0, 720.0, 716.8, 707.8, 697.9, 692.9, 682.0, 681.1 and 679.0. NuStar replaced the signs at the Hay Creek valve site and placed new stick-on labels on right-of-way markers which had been noted by PHMSA as un-readable during the inspection.

In its Response, NuStar did not contest the allegation of violation or the evidence in support of the violation. NuStar provided the same supporting argument and explanation for Item 3 as it did for Item 2, and requested that the item be withdrawn or reduced to a warning because it “cooperated with the agency, took responsibility and . . . , since the time of inspection has corrected allegations two and three”⁴ NuStar further supported its request for this item to be reduced to a warning based on its “excellent safety record” and its status as a “good corporate citizen.”⁵ For the same reasons explained above, I find these arguments do not warrant

⁴ *Id.*

⁵ *Id.*

withdrawal of the allegation of violation or reducing to a warning given the evidence in the record of noncompliance with the pipeline safety regulations.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.410(a)(2) by failing to place and maintain right-of-way line markers with the required specifications over each buried pipeline.

Item 4: The Notice alleged that Respondent violated 49 C.F.R. § 195.583(a), which states:

§ 195.583 What must I do to monitor atmospheric corrosion control?

(a) You must inspect each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months.

The Notice alleged that Respondent violated 49 C.F.R. § 195.583(a) by failing to properly inspect vaulted mainline valves for atmospheric corrosion. Specifically, the Notice alleged that during field inspections, PHMSA personnel asked how the atmospheric corrosion inspections of vaulted valves were performed, and NuStar personnel stated the inspections were performed by only one person at each site and by only viewing the valve and piping from ground level through the vault lid hatch opening. The vaulted valves are in confined spaces and require a Confined Space Permit for entry with proper equipment and number of personnel per NuStar Operation and Maintenance procedures. The person inspecting the valve did not enter the confined space to clean off the dirt and debris that covered the pipe and valve exterior and were not able to view the underside of the piping and valve or the pipe at areas of the vault wall penetration points in order to perform a proper inspection for atmospheric corrosion. NuStar failed to properly inspect for atmospheric corrosion the following vaulted valves:

- Geneva Unit locations - Shickley Jct/Columbus Segment: MP# 80.97 (North Platte River Valve), MP# 79.10 (North Bellwood Lakes Valve), MP# 58.35 (Gresham Valve), MP# 49.61 (Thayer Valve), MP# 37.46 (York Valve) and MP# 14.16 (Hwy 41 Valve);
- Moorhead-Roseville Unit locations: MP 639.6 (Rothsay Valve), MP 539.3 (New Munich Valve), MP 502.4 (Clearwater Valve), MP 487.3 (Monticello Valve), MP 453.1 (Lyndale Valve) and MP 451.9 (BN Valve).

In its Response, NuStar did not contest the underlying allegation of violation, but did contest the instances of violation used to calculate the proposed civil penalty. In addition, NuStar put forward the same position in response to Items 2 and 3, which is summarized under Item 2 above. NuStar further stated that it had “already created a plan to comply with the Proposed Compliance Order by entering the vaults with confined space permits per our NuStar Operating and Maintenance Procedures, and cleaning and inspecting the valve and pipe for atmospheric corrosion.”⁶

Having considered NuStar’s substantive argument challenging the instances of violation, I find NuStar misapplied the term “pipeline.” According to its Response, NuStar argued that

⁶ Response, at 1.

regardless of the number of valves along a single pipeline that did not comply with § 195.583, PHMSA must consider them in the aggregate to be no more than one instance of a violation. I disagree with this reading. Section 195.2 provides the definitions for terms used in the regulatory text of 49 C.F.R. Part 195. “Pipeline” is defined as “all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to line pipe, *valves*, and other appurtenances connected to line pipe, . . .” (emphasis added). The regulations are clear that the term “pipeline” includes valves, and thus § 195.583(a) requires operators to inspect valves for atmospheric corrosion, and a failure to do so is properly calculated as a separate instance of violation for each valve that was not properly inspected. In addition, I also reject the additional arguments put forward by NuStar in its request to reduce the violation to a warning for the same reasons articulated in Items 2 and 3.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.583(a) by failing to inspect each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months.

These findings of violation will be considered prior offenses 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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁷

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; any effect that the penalty may have on its ability to continue doing business; the good faith of Respondent in attempting to comply with the pipeline safety regulations; and self-disclosure or actions to correct a violation prior to discovery by PHMSA. 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 \$75,200 for the violations cited above.

Item 2: The Notice proposed a civil penalty of \$22,800 for Respondent’s violation of 49 C.F.R. § 195.412(a), for failing to use an appropriate method for inspection of pipeline right-of-way. NuStar requested the alleged violation be withdrawn or reduced to a warning and provided information to reduce the civil penalty based on its compliance history, cooperation, and community involvement. NuStar’s compliance history was already factored in to the civil penalty calculation. The Pipeline Safety Violation Report identified a single instance of violation between April 8, 2016, and April 8, 2021, and it was appropriately reflected in the

⁷ These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

penalty calculation that is in the record. Respondent's cooperation with PHMSA and its remediation of the violation are recognized, but are not grounds to reduce the penalty.⁸ Finally, I similarly reject the other reasons Respondent has offered to withdraw or reduce the penalty based on its community involvement.

I find the proposed penalty assessment factors appropriately support the proposed penalty for this violation. Specifically, the nature of the violation related to failing to conduct an activity; circumstances were that the violation was discovered by PHMSA; there were two instances of the violation; gravity reflected that safety was minimally affected; culpability reflected the operator failed to comply with an applicable requirement; Respondent had a single prior offense; and good faith reflected that the operator did not have a reasonable justification for the noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$22,800 for violation of 49 C.F.R. § 195.412(a).

Item 3: The Notice proposed a civil penalty of \$26,200 for Respondent's violation of 49 C.F.R. § 195.410(a)(2), for failing to place and maintain right-of-way line markers with the required specifications over each buried pipeline. NuStar requested the alleged violation be withdrawn or reduced to a warning and provided information to reduce the civil penalty based on its compliance history, cooperation, and community involvement. For the reasons stated above, I rejected this request. I find the proposed penalty assessment factors appropriately support the proposed penalty for this violation. Specifically, the nature of the violation related to missing equipment; circumstances were that the violation was discovered by PHMSA; there were two instances of the violation; gravity reflected that safety was minimally affected; culpability reflected the operator failed to comply with an applicable requirement; Respondent had a single prior offense; and good faith reflected that the operator did not have a reasonable justification for the noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$26,200 for violation of 49 C.F.R. § 195.410(a)(2).

Item 4: The Notice proposed a civil penalty of \$26,200 for Respondent's violation of 49 C.F.R. § 195.583(a), for failing to inspect each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with intervals not exceeding 39 months. NuStar requested the instances of violation be reduced from 12 instances to two, but for the reasons stated above, I find this was based on an incorrect understanding of the definition of "pipeline." Further, NuStar requested to reduce the civil penalty based on the same factors in Items 2 and 3, which I reject for the same reasons. I find the proposed penalty assessment factors appropriately support the proposed penalty for this violation. Specifically, the nature of the violation related to failing to conduct an activity; circumstances were that the violation was discovered by PHMSA; there were 12 instances of the violation; gravity reflected that safety was minimally affected; culpability reflected the operator failed to comply with an applicable requirement; Respondent had a single prior offense; and good faith reflected that the operator did not have a reasonable justification for the noncompliance. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$26,200 for

⁸ See, e.g., Kinder Morgan Liquid Terminals, LLC, Final Order, CPF No. 1-2018-5004, 2019 WL 4257137, at *5 (Jun. 27, 2019) (finding post-inspection corrective actions do not constitute grounds to reduce the penalty because they were taken after PHMSA had already identified the violation).

violation of 49 C.F.R. § 195.583(a).

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 **\$75,200**.

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 (AMK-325), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd, Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$75,200 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 4 in the Notice for violation of 49 C.F.R. § 195.583(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 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 195.583(a) (**Item 4**), Respondent must properly inspect the below listed vaulted mainline valves for atmospheric corrosion by entering the vaults with confined space permits per NuStar Operating and Maintenance Procedures and clean and inspect the valve and pipe for atmospheric corrosion. This must be completed and documentation submitted to the Director within 120 days of the receipt of the Final Order.
 - a. Geneva Unit locations - Shickley Jct/Columbus Segment: MP# 80.97 (North Platte River Valve), MP# 79.10 (North Bellwood Lakes Valve), MP# 58.35 (Gresham Valve), MP# 49.61 (Thayer Valve), MP# 37.46 (York Valve) and MP# 14.16 (Hwy 41 Valve);
 - b. Moorhead-Roseville Unit locations: MP 639.6 (Rothsay Valve), MP 539.3 (New Munich Valve), MP 502.4 (Clearwater Valve), MP 487.3 (Monticello Valve), MP 453.1 (Lyndale Valve) and MP 451.9 (BN Valve).

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 and demonstrating good cause for an extension.

PHMSA requests that Respondent maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to the Director. It is requested that these costs be reported in two categories: (1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and (2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), 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 probable violation of Part 195, but identified it as a warning item pursuant to § 190.205. The warning was for:

49 C.F.R. § 195.264(b)(1)(i) (**Item 1**) — Respondent's alleged failure to satisfy the requirements of Section 22.11.2 of NFPA-30 (2012 edition) regarding impoundment around breakout tanks.

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. § 190.243, Respondent may submit a Petition for Reconsideration of this Final Order to the 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, no later than 20 days after receipt of service of this Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

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

December 1, 2021

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued