

**NOTICE OF PROBABLE VIOLATION
PROPOSED CIVIL PENALTY
And
PROPOSED COMPLIANCE ORDER**

VIA ELECTRONIC MAIL TO: Brad.Barron@nustarenergy.com and
gary.koegeboehn@nustarenergy.com

April 9, 2021

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

CPF 3-2021-005-NOPV

Dear Mr. Barron:

On various dates between February 4th and November 5th, 2020, representatives of the Pipeline and Hazardous Materials Safety Administration (PHMSA) pursuant to Chapter 601 of 49 United States Code (U.S.C.) inspected facilities and records of your Central East Region Refined Products pipeline system in Kansas, Nebraska, Iowa, South Dakota, North Dakota and Minnesota.

As a result of the inspection, it is alleged that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (C.F.R.). The items inspected and the probable violations are:

1. **§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.**
 - (a)
 - (b) **After October 2, 2000, compliance with paragraph (a) of this section requires the following for the aboveground breakout tanks specified:**
 - (1) **For tanks built to API Spec 12F, API Std 620, and others (such as API Std 650 (or its predecessor Standard 12C)), the installation of impoundment must be in accordance with the following section of NFPA-30 (2012 edition)(incorporated by reference per §195.3);**
 - (i) **Impoundment around a breakout tank must be installed in accordance with section 22.11.2.**

NuStar failed to satisfy the requirements of Section 22.11.2 of NFPA-30 (2012 edition) regarding impoundment around breakout tanks. Section 22.11.2.6, NFPA-30 (2012 edition) states “[e]ach diked area containing two or more tanks shall be subdivided, preferably by drainage channels or at least by intermediate dikes, in order to prevent minor spills from a tank from endangering adjacent tanks within the diked area.”

PHMSA’s field inspection of NuStar’s Tanks 50-3 (built to API Std 650 in 2012) and 50-8 (built to API Std 650 in 2016) at the Wolsey, SD facility and Tanks 50-5 and 50-6 (both built to API Std 650 in 2016) at the Yankton, SD facility found NuStar failed to subdivide the tanks, or even have drainage channels or intermediate dikes installed in accordance with the regulation.

In addition, Tanks 50-3 and 50-8 at the Wolsey, ND facility were found to have control of drainage that was not accessible under fire conditions from outside the impoundment area as required per section 22.11.2.7.1 of NFPA-30 (2012 edition) which states “[c]ontrol of drainage shall be accessible under fire conditions from outside the dike.” The control device was found to be only accessible by walking out on an elevated platform that was inside the dike of the impoundment area making it impossible to operate during a fire condition.

After PHMSA discovered the deficiencies, NuStar promptly corrected the issues by installing intermediate dikes and installing a new control for drainage that is now outside the impoundment area.

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.

NuStar failed to satisfy the requirements of §195.412(a) by not using an appropriate method for inspection of pipeline right-of-way.

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 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.

3. **§ 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.

NuStar failed to satisfy the requirements of §195.410(a)(2) by not placing and maintaining 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.

PHMSA inspected line markers for the 10" & 16" pipelines in the Geneva Unit at the C.R.I.&P. railroad crossing near Belleville, KS. Two posts for each line were observed. For the 10" 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"

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” pipeline running from Mandan, ND to Moorhead, MN, 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.

4. **§ 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.

NuStar failed to satisfy the requirements of §195.583(a) by improperly inspecting vaulted mainline valves for atmospheric corrosion. During field inspections, PHMSA personnel asked how the atmospheric corrosion inspections of vaulted valves were performed. 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 requires 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 or 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 had 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).

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$222,504 per violation per day the violation persists, up to a maximum of \$2,225,034 for a related series

of violations. For violation occurring on or after July 31, 2019 and before January 11, 2021, the maximum penalty may not exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022.

We have reviewed the circumstances and supporting documentation involved for the above probable violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$75,200 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$ 22,800
3	\$ 26,200
4	\$ 26,200

Warning Items

With respect to Item 1 we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. Thank you for promptly correcting this item.

Proposed Compliance Order

With respect to item 4 pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to NuStar Pipeline Operating Partnership L.P. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. Be advised that all material you submit in response to this enforcement action is subject to being made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 CFR § 190.211. If you do not respond within 30 days of receipt of this Notice, this constitutes

a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 3-2021-005-NOPV** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Gregory A. Ochs
Director, Central Region, Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Response Options for Pipeline Operators in Compliance Proceedings*

Cc: Gary Koegeboehn
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PROPOSED COMPLIANCE ORDER

Pursuant to 49 U.S.C. § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to NuStar Pipeline Operating Partnership, L.P. a Compliance Order incorporating the following remedial requirements to ensure the compliance of NuStar Pipeline Operating Partnership, L.P. with the pipeline safety regulations:

1. In regards to Item Number 4 of the Notice pertaining to NuStar failing to properly inspect vaulted mainline valves for atmospheric corrosion at:

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).

NuStar needs to correct this condition by properly inspecting the above 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 should be completed within 120 days of the receipt of the Final Order.

2. It is requested (not mandated) that NuStar maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Gregory Ochs, Director, Central Region, Pipeline and Hazardous Materials Safety Administration. 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.