

September 3, 2020

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

Mr. Brad Barron
President and Chief Executive Officer
NuStar Energy, LP
19003 IH-10 West
San Antonio, Texas 78257

Re: CPF No. 4-2020-5005

Dear Mr. Barron:

Enclosed please find the Final Order issued in the above-referenced case to NuStar Pipeline Operating Partnership, LP, a subsidiary of NuStar Energy, LP. It makes one finding of violation and assesses a civil penalty of \$10,300. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon receipt of payment. Service of the Final Order by electronic 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: Ms. Mary McDaniel, Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Gary Koegeboehn, Vice President - Pipeline Operations, NuStar Energy, LP,
gary.koegeboehn@nustarenergy.com
Mr. Mike Dillinger, Senior Counsel, NuStar Energy, LP, 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**

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In the Matter of)		
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NuStar Pipeline Operating Partnership, LP, a subsidiary of NuStar Energy, LP)	CPF No. 4-2020-5005	
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Respondent.)		
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FINAL ORDER

From August 9 through December 17, 2019, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted a records review of NuStar Pipeline Operating Partnership, LP, a subsidiary of NuStar Energy, LP (NuStar or Respondent). NuStar operates the Hermann Pipeline, a four-inch anhydrous ammonia pipeline located in Hermann, Missouri.¹

As a result of the records review, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated February 4, 2020, 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 violated 49 C.F.R. § 195.452(j)(1) and proposed assessing a civil penalty of \$10,300 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation.

After requesting an extension, NuStar responded to the Notice by letter dated March 27, 2020 (Response). The company contested the allegation, offered additional information in response to the Notice, and requested that the Notice be converted to a Warning Letter and that the Proposed Compliance Order be deemed complete. Respondent did not request a hearing and therefore has waived its right to one.

FINDING OF VIOLATION

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

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(1), which states:

¹ Pipeline Safety Violation Report (Violation Report), at 1 (Feb. 4, 2020) (on file with PHMSA).

§ 195.452 Pipeline integrity management in high consequence areas.

(a)

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*

(1) *General.* After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(1) by failing to continue to assess its line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area. Specifically, the Notice alleged that NuStar failed to assess the Hermann Pipeline within the required five-year interval, not to exceed 68 months.² NuStar performed its last in-line inspection (ILI) assessment of the Hermann Pipeline on November 19, 2013, and did not complete another one within the five-year assessment interval, not to exceed 68 months (no later than July 19, 2019).

In its Response, NuStar noted that it had encountered technical and equipment availability issues that led to the prolonged completion of a successful ILI assessment, which was eventually completed in March 2020.³ Specifically, NuStar stated that in March 2017, the company began preparations for an ILI assessment of the Hermann Pipeline, consisting of a series of three ILI tools: (1) a gauge tool; (2) a deformation tool; and (3) a magnetic-flux leakage (MFL) tool.⁴ While the gauge and deformation tool runs were successful, the MFL tool was only able to achieve 62 percent coverage due to technical issues associated with certain bends in the four-inch pipeline. As a result, NuStar scheduled a second ILI assessment for the spring of 2019.

NuStar reported that during the second ILI assessment, the gauge tool ran successfully.⁵ The launch of the deformation tool, however, was delayed due to equipment availability problems and plant outages.⁶ The deformation tool finally launched on June 26, 2019.⁷ During the tool run, the deformation tool became lodged in the pipeline approximately 2.8 miles downstream of the launcher. After unsuccessful attempts to dislodge the tool, NuStar notified PHMSA of the

² Pursuant to 49 C.F.R. § 195.452(j)(3), an operator must establish a five-year interval, not to exceed 68 months, for continually assessing the line pipe's integrity.

³ Response, at 2.

⁴ The company noted that MFL tools have historically experienced challenges associated with small diameter pipelines because "... the size of the pipeline limits the ability of the tools to traverse the pipeline at an optimal velocity which ensures sufficient inspection coverage and quality results." *Id.*

⁵ The gauge tool ran on April 23, 2019. *Id.*

⁶ The deformation tool had to be sourced from Germany. *Id.*

⁷ *Id.*

delays and incomplete tool runs on July 19, 2019.⁸

Pursuant to § 195.452(j)(4)(ii), if an operator requires a longer assessment period due to unavailable technology, it must notify PHMSA 180 days before the end of the five-year interval, justify the reason(s) why it cannot comply, demonstrate what action(s) it is taking to evaluate the integrity of the line in the interim, and provide an estimate of when the assessment can be completed. In this case, NuStar did not notify PHMSA 180 days in advance of the assessment deadline that it needed additional time to complete the ILI runs due to unavailable technology. Instead, the company did not notify PHMSA until the day of the regulatory deadline, July 19, 2019, to report that it would not meet the five-year assessment interval. NuStar did not complete its ILI assessment on the Hermann Pipeline until March 2020.

This provision in § 195.452(j)(4)(ii) provides a “safe harbor” mechanism by which operators who experience technical difficulties in meeting the five-year assessment interval can alert PHMSA to any delays and make alternative provisions to ensure safety until those problems can be resolved. NuStar, however, did not take advantage of this flexibility provided by the Code.

Accordingly, after considering all of the evidence, I find that Respondent violated 49 C.F.R. § 195.452(j)(1) by failing to assess the Hermann Pipeline at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

This finding 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 \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.⁹ 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; 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 \$10,300 for the violation cited above.

Item 1: The Notice proposed a civil penalty of \$10,300 for Respondent’s violation of 49 C.F.R.

⁸ The tool was ultimately cut out of the pipeline in November 2019. In December 2019, a root cause analysis by the ILI tool vendor determined that there was a foreign metal object on the magnet segment that was located at the weld, but ultimately was unable to identify the actual cause of the failure. *Id.*

⁹ These amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223.

§ 195.452(j)(1) for a failure to assess the Hermann Pipeline at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area. In its Response, NuStar presented additional information to explain why the company did not conduct the ILI assessment within the five-year period. Specifically, NuStar explained that equipment unavailability, plant outages, and unforeseen complications with the first MFL tool caused the company to exceed the regulatory deadline. I will address each argument separately below.

First, the regulatory deadline already provides operators an additional eight-month allowance to complete their five-year assessments by permitting operators to extend beyond the 60-month deadline to 68-months.¹⁰ This extension of time provides flexibility to allow for unforeseeable events (e.g., permitting delays, weather, tool failures) that could affect the ability to successfully complete an assessment on time.¹¹ Additionally, while it is unfortunate, unavailable internal inspection technology is not uncommon in the pipeline industry. Therefore, PHMSA has promulgated regulations to address situations where operators face unavailable technology issues that may delay integrity assessments. As discussed above, NuStar did not avail itself of this opportunity to timely notify PHMSA of the delay.

Second, NuStar contended that unforeseen complications with the first MFL tool caused delays. In its Response, the company noted that small-diameter pipelines, like the Hermann line, have historically experienced challenges with MFL tools. Therefore, the company should have known that its four-inch diameter line might experience potential complications with the MFL tool. Even if NuStar believed the MFL tool would run successfully, it learned otherwise when the first run resulted in only 62 percent coverage in 2017. The company even considered replacing bends in the line, and initiated discussions with another tool vendor in 2018 after the first MFL tool failed.¹² Despite the complications of the first tool run, NuStar did not schedule a second tool run until 2019. The deformation tool ran in June 2019, one month before the regulatory deadline, and beyond the time allowance to notify PHMSA that it required a longer assessment period. Therefore, I do not find either explanation warrants a reduction in the proposed penalty.

Further, the proposed penalty amount took into consideration NuStar's good-faith efforts to comply with the regulation and proposed a lower penalty that took such efforts into account.¹³ After the first unsuccessful MFL tool run, NuStar discussed replacing problematic bends in the line, and initiated discussions with another tool vendor. When NuStar scheduled the second assessment, the company reasonably did not anticipate any problems with the deformation tool, since they ran it successfully in 2017.

¹⁰ See 49 C.F.R. § 195.452(j)(3).

¹¹ PHMSA Hazardous Liquid Integrity Management FAQ 5.11 (last revised Dec. 19, 2007) available at <https://www.phmsa.dot.gov/pipeline/hazardous-liquid-integrity-management/hl-im-faqs> (last accessed July 28, 2020).

¹² Response, at 2.

¹³ See Violation Report, at 10 (determining that the company "had a reasonable justification for its noncompliance").

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of **\$10,300** for violation of 49 C.F.R. § 195.452(j)(1).

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 \$10,300 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 WITHDRAWAL

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 195.452(j)(1). 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.

With regard to the violation of § 195.452(j)(1) (Item 1), Respondent argued the proposed compliance terms should be deemed complete. Specifically, the Proposed Compliance Order required NuStar to conduct an assessment of the Hermann Pipeline within 90 days of the issuance of a final order.¹⁴ In its Response, NuStar reported that it completed the MFL tool run by March 2020. The company also informed PHMSA that it had updated its procedures to ensure timely notice to PHMSA of assessment delays and implementation of interim safety measures to ensure the integrity of the pipeline should unforeseen circumstances arise with respect to tool technology and equipment availability.¹⁵ The company also noted that it was exploring alternative assessment methods and technologies for its four-inch-diameter Hermann Pipeline.¹⁶

Despite not running these tools concurrently, or within the five-year assessment interval, NuStar successfully ran a gauge tool (April 2019), a deformation tool (May 2017) and a MFL tool (March 2020) on its Hermann Pipeline. The Region did not provide any explanation why the

¹⁴ Notice, at 4.

¹⁵ Response, at Exhibit 4, Draft Revisions to NuStar IM Variance Procedure.

¹⁶ Response, at 3.

Compliance Order should remain in place given the fact that the operator has completed its reassessment (despite doing so beyond the five-year interval). Therefore, the Compliance Order is withdrawn. It is important to note, however, that running internal inspection tools years apart is not recommended. Given the capabilities of current technology, an operator who elects to use internal inspection assessment methods should run a metal loss tool and a deformation device in a similar time frame to maximize the value of data integration.¹⁷ Further, running the tools in close proximity allows the operator to readily identify potentially serious anomalies such as dents with metal loss. Therefore, I strongly recommend that NuStar amend its written procedures to require that its deformation tool and metal loss tool be run as concurrently as possible during the five-year assessment interval.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000, as adjusted for inflation (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.

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.

September 3, 2020

Alan K. Mayberry
Associate Administrator
for Pipeline Safety

Date Issued

¹⁷ See § 195.452(g) (requiring operators to analyze all available information about the integrity of the entire pipeline and the consequences of a failure, including data gathered during integrity assessments).