

July 25, 2023

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

CPF No. 3-2023-005-NOPV

Dear Mr. Barron:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and NuStar Pipeline Operating Partnership, L.P., which was executed on July 21, 2023. Service of the Consent Order and Consent Agreement by electronic mail is deemed effective upon the date of transmission and acknowledgement of receipt, or as otherwise 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: Consent Order and Consent Agreement

cc: Mr. Gregory Ochs, Director, Central Region, Office of Pipeline Safety, PHMSA
Mr. Gary Koegeboehn, Vice President, Pipeline Operations, NuStar,
gary.koegeboehn@nustarenergy.com
Mr. Chris Rulon, Vice President and Assistant General Counsel, NuStar,
chris.rulon@nustarenergy.com
Ms. Catherine Little, Counsel for Nustar, Bracewell LLP, catherine.little@bracewell.com

CONFIRMATION OF RECEIPT REQUESTED

Date Issued

**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.,	)	CPF No. 3-2023-005-NOPV
	)	
Respondent.	)	
	)	

CONSENT AGREEMENT

NuStar Pipeline Operating Partnership, L.P. (NuStar or Respondent) operates an anhydrous ammonia pipeline system consisting of approximately 2,000 miles of mainline and lateral pipe with diameters ranging from three to ten inches. The system transports anhydrous ammonia through Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, and Nebraska. From September 12 through September 16, 2022, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code (U.S.C.), reviewed records and inspected pipe excavations at three locations on the NuStar's anhydrous ammonia system, Cabot to Franklin line segment, in Arkansas. The review and inspection were conducted in coordination with NuStar, which, after being informed by PHMSA of potential issues with a former employee, was in the process of voluntarily excavating and re-evaluating sleeves to verify their integrity.

As a result of the inspection, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated January 25, 2023, a Notice of Probable Violation, Proposed Compliance Order, and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that NuStar committed violations of three provisions of 49 C.F.R. Part 195 (Items 1, 2, and 3), proposed ordering Respondent to take certain measures to correct the alleged violations, and proposed a civil penalty of \$191,700. Prior to and after receiving the Notice, NuStar has coordinated with and provided records and information to PHMSA, updated its procedures and processes, retrained work crews and continued to excavate, re-evaluate and, where necessary, repair issues identified by the Notice.

NuStar responded to the Notice by letter dated February 24, 2023 (Response), requesting a hearing and to meet informally with PHMSA to discuss clarification and modification of the Proposed Compliance Order (PCO) requirements to avoid the need for a hearing. NuStar stated it accepted the allegations and proposed civil penalties associated with Notice Items 1, 2, and 3.

PHMSA and Respondent (the Parties) subsequently met to discuss the issues raised in the

Response. As a result of those discussions and as explained in more detail below, the Parties agreed to clarification and modification of the PCO requirements.

Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and will serve the public interest by promoting safety and protection of the environment, pursuant to 49 U.S.C. § 60101, *et seq.* and 49 C.F.R. Part 190, and upon consent and agreement, the Parties hereby agree as follows:

I. General Provisions:

1. Respondent acknowledges that as the operator of the pipeline facilities subject to the Notice, Respondent and its referenced pipeline facilities are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Consent Agreement (Agreement), Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

3. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except for the Dispute Resolution provisions set forth herein. Respondent agrees to promptly withdraw its request for an administrative hearing regarding the Notice upon receipt of the signed Agreement.

4. This Agreement shall apply to and be binding upon PHMSA and Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

5. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

6. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101,

et seq., and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

7. For all transfers of ownership or operating responsibility of Respondent's pipeline system referenced herein, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer. Respondent will provide written notice of the transfer to the Director no later than 60 days after the transfer occurs.

8. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

9. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

10. Except as set forth herein, this Agreement does not constitute a finding of violation of any other federal law or regulation and may not be used in any civil proceeding of any kind as evidence or proof of any fact, fault, or liability, or as evidence of a violation of any law, rule, regulation, or requirement, except in a proceeding to enforce the provisions of this Agreement or in future PHMSA enforcement actions.

II. Findings of Violation:

11. ***Item 1 - 49 C.F.R. § 195.214(b)***: The Notice alleged that NuStar's qualified contract welder did not follow welding procedures when he welded a sleeve on the pipeline at an anomaly dig at Mile Post 10.28 on the Cabot to Franklin line segment in Arkansas. Respondent did not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.214(b).

12. ***Item 2 - 49 C.F.R. § 195.228***: The Notice alleged that NuStar's company inspector did not adequately visually inspect the fillet and longitudinal welds on certain repair sleeves installed during anomaly investigation digs beginning in 2020 as required by NuStar's welding manual and API 1104. Respondent did not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.228.

13. ***Item 3 - 49 C.F.R. § 195.234(b)(1)***: The Notice alleged that NuStar's company inspector, despite indicating that magnetic particle testing was completed on required documentation, did not adequately non-destructively test the fillet and longitudinal welds on

certain repair sleeves in accordance with NuStar's written set of procedures. Respondent did not contest the allegation of violation as alleged in the Notice. As such, PHMSA finds a violation of 49 C.F.R. § 195.234(b)(1).

14. Items 1, 2, and 3, will be considered by PHMSA as prior offenses in any future PHMSA enforcement action taken against Respondent for the five (5)-year period following the *Effective Date* of this Agreement.

III. Civil Penalty:

15. *Items 1, 2, and 3:* The Notice proposed assessing a civil penalty in the amount of \$63,900 for Item 1, \$63,900 for Item 2, and \$63,900 for Item 3. Respondent did not contest the proposed civil penalties for these Items. As such, Respondent shall pay a civil penalty in the amount of \$63,900 for Item 1, \$63,900 for Item 2, and \$63,900 for Item 3.

16. Respondent shall pay a total civil penalty in the amount of **\$191,700**, pursuant to the payment instructions at 49 C.F.R. § 190.227(a), to be paid in full no later than 20 days from the *Effective Date* of this Agreement.

IV. Compliance Order:

17. *Items 1, 2, and 3:* The Notice proposed certain compliance order actions to address the non-compliance alleged in the Notice. Respondent requested clarification and modification of the Proposed Compliance Order (PCO) requirements to specify the scope of actions required and the standards to be met under the PCO terms. The Parties agreed to certain clarifications and modifications to the PCO to provide clarity regarding the actions necessary to ensure proper implementation. As such, Respondent agrees to undertake the following corrective measures:

A. Action Plan.

1. Respondent must identify (a) all the welds produced by the Welder identified on Work Order 40951429 from 2017 to 2022 and (b) all the welds that were evaluated by the Company Inspector identified on Work Order 40951429 from 2017 to 2022 (collectively, the "Subject Welds"). This information must be submitted to the Director within 90 days of the Effective Date of the Consent Agreement.
2. Within 90 days of the Effective Date of the Consent Agreement, Respondent must submit to the Director for review and approval the following:
 - a. How Respondent determined which of the Subject Welds will be excavated and re-evaluated, and how Respondent will prioritize those excavations and re-evaluations; and

- b. An approach for verifying that the Subject Welds meet the visual inspection and non-destructive inspection acceptability requirements within Section 9 of API 1104 (20th edition, October 2004, including errata/addendum (July 2007) and errata 2 (2008)) (the “Welding Standards”).
- 3. Respondent may submit a written request to use a statistical approach (e.g., a 95% confidence level) to determine if certain of the Subject Welds meet the Welding Standards. The PHMSA Central Region Director will review and approve any such request, if made. If approved, Respondent will only be required to demonstrate compliance with the approved statistical approach to satisfy compliance with I.A.2.(b) for the population specified.
- B. **Monthly Report.** Respondent will provide the Director with a schedule by the 20th of every month, which includes a list of the projected locations that are targeted for excavation and re-evaluation during the upcoming month(s).
- C. **Quarterly Report.** Respondent will provide the Director with a quarterly update on the number of Subject Welds that were excavated and evaluated, relevant findings, and the remediation performed. The report may include an update on Respondent’s progress toward developing a statistical approach as referenced in Item I.A.3. above. The first report shall be due on October 1, 2023.
- D. **Completion Date.** All re-evaluations and excavations, as appropriate, must be completed by December 31, 2024.
- E. **Extensions of Time.** To the extent that Respondent is unable to meet any of the specified deadlines, including completion of the required evaluations and any necessary remediations by December 31, 2024, Respondent must submit a written request and explanation for an extension at least 30 days prior to the deadline. The Director will review and approve any reasonable requests for extensions.

V. **Enforcement:**

18. This Agreement is subject to all enforcement authorities available to PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190, including administrative civil penalties under 49 U.S.C. § 60122, of up to \$239,142 per violation for each day the violation continues and referral of the case to the Attorney General for judicial enforcement, if PHMSA determines that Respondent is not complying with the terms of this Agreement in accordance with the determinations made by the Director, or in accordance with decisions of the Associate Administrator if resolved pursuant to the Dispute Resolution process herein. The maximum civil penalty amounts are adjusted annually for inflation. *See* 49 C.F.R. § 190.223. All work plans, action plans, and associated schedules set forth or referenced in Section IV are automatically incorporated into this Agreement and are enforceable in the same manner.

VI. Review and Approval Process:

19. With respect to any submission under Section IV (Compliance Order) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission; (b) approve the submission on specified, reasonable conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all actions as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

VII. Dispute Resolution:

20. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including any decision of the Director under the terms of Sections IV (Compliance Order) and VI (Review and Approval Process). If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after the dispute is first raised, in writing, to the Director, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety, PHMSA. Such request must be made in writing and provided to the Director, counsel for the Central Region, and to the Associate Administrator for Pipeline Safety, no later than 10 calendar days after the 15-day deadline for informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information Respondent believes is relevant to the dispute. Decisions of the Associate Administrator under this paragraph will constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process.

VIII. Effective Date:

21. The term "Effective Date," as used herein, is the date on which the Consent Order is issued by the Associate Administrator, PHMSA, incorporating the terms of this Agreement.

IX. Recordkeeping and Information Disclosure:

22. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five (5) years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information

submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

X. Modification:

23. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

XI. Termination:

24. This Agreement will remain in effect until the Compliance Order in Section IV is satisfied, as determined by the Director. The Agreement shall not terminate until the Director confirms, in writing, that the Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

XII. Ratification:

25. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

26. The Parties hereby agree to all findings, conditions, and terms of this Agreement.

[Signature Lines on Following Page]

For NuStar Pipeline Operating Partnership, L.P.:
By NuStar Pipeline Company, LLC; its General Partner

Gerald R. “Gary” Koegeboehn, Vice President

Date

For PHMSA:

Director, Central Region, Office of Pipeline Safety

Date