



Gary Koegeboehn
Vice President – Pipeline Operations

November 22, 2024

Mr. Gregory Alan Ochs
Director, Central Region
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
901 Locust Street, Suite 462
Kansas City, MO 64106

RE: NuStar Pipeline Operating Partnership, L.P.
Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order,
CPF 3-2024-008-NOPV
Contest of Allegation and Proposed Penalty Mitigation

Dear Mr. Ochs,

NuStar Pipeline Operating Partnership L.P. (NuStar¹ or the Company) is in receipt of the above-referenced Notice of Probable Violation (NOPV), Proposed Civil Penalty (PCP) and Proposed Compliance Order (PCO) issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) dated October 25, 2024. The NOPV alleges three (3) violations of federal pipeline safety regulations, applies an associated proposed civil penalty for all three findings, and requires corrective actions for two findings.

By way of background, the allegations relate to a release of anhydrous ammonia that occurred in Union County, Arkansas, on February 27, 2022. NuStar is committed to safely operating its system in compliance with the federal pipeline safety regulations, including those related to spill response and reporting and the evaluation of anomalous conditions. In the spirit of cooperation and without admission, NuStar does not contest the underlying allegation of violation for Findings #1 and #2 of the NOPV. NuStar, to preserve its rights in this matter, contests the following: (1) the factual record for NOPV Finding #1; (2) the classification of Finding #2 as a NOPV rather than NOA; (3) the PCO associated with Findings #1 and #2 for purposes of clarifying PHMSA's expectations regarding the necessary changes; and (3) the PCP for Findings #1 and #2.

NuStar will make changes to its procedures as directed by the PCO for Findings #1 and #2 and will provide those updated procedures to PHMSA for review and approval. NuStar additionally requests that the Region not issue a Region Recommendation for a Final Order until after NuStar has had the opportunity to meet with the Region in an informal conference for the purpose of resolving the NOPV via a Consent Agreement. NuStar further reserves its right to file a supplemental response to the NOPV if the informal conference does not result in a consent agreement and the matter is referred for adjudication.

In **Finding #1** of the NOPV, PHMSA alleges that NuStar failed to give notice of an event described in § 195.50 no later than one hour after confirmed discovery, which the Agency asserts

¹ You may be aware of Sunoco LP's recent acquisition of NuStar Energy L.P. through an all-stock purchase. All NuStar operating companies, including NuStar Pipeline Operating Partnership L.P., still own and operate the same assets as before the transaction. In other words, no asset transfer or change of operational control has occurred. For the sake of clarity, this correspondence only references NuStar; however, our communications going forward will be on Sunoco letterhead and from the Sunoco.com email domain.

occurred when NuStar isolated the pipeline.² PHMSA further alleges NuStar's procedure³ entitled "207 Pipeline Safety Accident Reporting" failed to provide NuStar's personnel any guidance as to when, or how, to perform an estimate of property damage resulting from an emergency or release.

NuStar respectfully disagrees with PHMSA's factual representations. The SCADA leak alarm, triggered by pipeline flow and pressure deviations at 3:50 a.m. indicated a deviation from normal operation,⁴ not an "accident" as stated by PHMSA. Furthermore, the "activation of emergency procedures" referenced by PHMSA relates to NuStar's adherence to procedures for responding to abnormal operations. The initiation of those procedures does not automatically impute the fact that an accident has occurred. As such, the activation of those procedures was not the "earliest practicable moment for NuStar to have given notice."

NuStar's Control Room Management Program (CRMP) procedures (Appendix 1) were revised in September 2022 and October 2022 [REDACTED]

NuStar demonstrated an abundance of caution in shutting down the line based on suspicion, not an emergency. As such, NuStar had "reasonable justification for its non-compliance," which should accordingly be reflected in the penalty calculation for this finding. NuStar respectfully requests that the "Good Faith" penalty category be adjusted from 0 to -10 for this finding.

Although NuStar will edit its *O&M Manual* in accordance with PHMSA's PCO, existing Procedure 207 Pipeline Safety Accident Reporting (Appendix 2), Subsection 3.1.1 Step #3 contains from the exact language of § 195.52 and wholly adopts Form PHMSA F 7000-1 instructions for estimating property damage.⁶ NuStar *O&M Manual*, Procedure 203 Responding to Emergencies (Appendix 3) further facilitates the requirements of § 195.52(a) by providing more specificity on the evaluation of accidental releases, initial response efforts and details personnel roles and responsibilities in direct support of a "confirmed discovery."⁷ As such, NuStar respectfully requests that the Culpability penalty factor be adjusted from 2 to -1 for this Finding.

In **Finding #2** of the NOPV, PHMSA alleges that NuStar failed to have a procedure to calculate and provide a reasonable initial estimate of the amount of product released from the accident. The NOPV further elaborates that "PHMSA found that NuStar's procedure entitled '209 Initial Estimate of Product Released from a Pipeline Facility' (Procedure 209) failed to provide any methodology for initially estimating a large release of anhydrous ammonias that would justify immediate notification to the NRC."

Importantly, the NOPV focuses on Procedure 209 Section 3.5 [REDACTED]

[REDACTED] If the available information is insufficient, Section 3.1.2 instructs HSE to consult with Engineering and the Control Center to determine the available

² Specifically, in making this determination, PHMSA concluded that (1) NuStar discovered the accident when its SCADA system detected the rupture in the form of a leak alarm within 5 minutes of the rupture (3:50 a.m.), (2) the moment following the activation of the emergency procedures was the earliest practicable moment for NuStar to have given notice of the accident, and (3) NuStar had confirmed discovery based on preliminary evaluation effectively upon its decisions to close valves to isolate the pipeline segment(s), and not upon its later visual confirmation.

³ All procedural references relate to *NuStar Operations & Maintenance (O&M) Manual*, Revision Date: December 31, 2021.

⁴ 49 CFR § 195.402(d)(1)(v).

⁵ See *NuStar Control Room Management Plan* § 15.2.1.

⁶ See *NuStar O&M Manual*, Procedure 207 Pipeline Safety Accident Reporting § 3.1.1.

⁷ See *NuStar O&M Manual*, Procedure 203 Responding to Emergencies § 3.1. and § 3.1.7.1.

information to adequately plan a sufficient response. [REDACTED]

Given the above information regarding the applicable procedures, this finding is better suited as a NOA as opposed to a NOPV. Nonetheless, NuStar will make additional changes to the Procedure 209 *Initial Estimate of Product Released from a Pipeline Facility* in accordance with PHMSA's PCO.

In **Finding #3** of the NOPV, PHMSA alleges that NuStar failed to evaluate an anomalous condition discovered by in-line inspection.

NuStar respectfully disagrees with this conclusion. As evident in documentation (Appendix 4) previously provided to PHMSA,⁸ NuStar completed an in-line inspection (ILI) starting on March 9, 2020 to assess for deformations and corrosion. The anomalous condition—later presumed to be in the same location as the failed portion of the pipe—was identified at log-distance 276,347.27. [REDACTED]

Upon receipt of the above information, NuStar's practice is to evaluate as-called data to determine if an anomaly requires remediation. Specifically, NuStar evaluated this anomaly against all criteria in § 195.452(h)(4). Given that the anomalous condition was called as external corrosion, it was compared to the following specific criteria in the applicable regulations:

- *Metal loss greater than 80% of nominal wall regardless of dimensions* (§ 195.452(h)(4)(i)(A)): NuStar determined this condition was not met as the metal loss depth was called with a maximum of 30% nominal wall.
- *Predicted burst pressure less than established maximum operating pressure* (§ 195.452(h)(4)(i)(B)): NuStar determined this condition was not met as the calculated burst pressure was 2,239.5 psig and the established maximum operating pressure is 1,340 psig.
- *Operating pressure less than current maximum operating pressure* (§ 195.452(h)(4)(iii)(D)): NuStar determined this condition was not met as the calculated safe operating pressure was 1,612.5 psig and the established maximum operating pressure is 1,340 psig.
- *General corrosion exceeding 50% of the nominal wall* (§ 195.452(h)(4)(iii)(E)): NuStar determined this condition was not met as the metal loss depth was called with a maximum of 30% nominal wall and was not categorized as general corrosion.
- *Predicted metal loss within specified areas exceeding 50% of the nominal wall* (§ 195.452(h)(4)(iii)(F)): NuStar determined this condition was not met as the metal loss depth was called with a maximum of 30% nominal wall (Appendix 5).⁹

Given that the anomaly specifications did not meet any of the criteria in § 195.452(h)(4), there was no requirement to investigate or excavate the condition. As such, NuStar is contesting Finding #3 and respectfully requests its removal from this case, including the civil penalty assessment.

⁸ See document titled "2020 CHA-HAM-10 Final Report" provided to PHMSA in April 2024.

⁹ Furthermore, NuStar's Integrity Management Program (IMP) Figure 3-7 includes a more stringent requirement stating any corrosion called at 50% or greater metal loss, regardless of the other specific criteria found in § 195.452(h)(4)(iii)(E) and § 195.452(h)(4)(iii)(F), will be considered a 180-day condition. NuStar determined this condition was not met as the metal loss depth was called with a maximum of 30% nominal wall.

Gary Koegeboehn
Vice President – Pipeline Operations

NuStar appreciates PHMSA's cooperation and coordination regarding these issues. The Company is committed to pipeline safety and integrity. As referenced above, NuStar respectfully request the opportunity to partake in an informal conference for the purpose of resolving the NOPV.

Sincerely,



Gary Koegeboehn
Vice President – Pipeline Operations

cc: Rich Pepper, Senior Director HES and Counsel
Kellie Seiter, Manager, Pipeline Safety

Appendices

Table of Contents:

1. *NuStar Control Room Management Plan* § 15.2.1.
2. *NuStar O&M Manual, Procedure 207 Pipeline Safety Accident Reporting* § 3.1.1.
3. *NuStar O&M Manual, Procedure 203 Responding to Emergencies* § 3.1. and § 3.1.7.1.
4. *2020 CHA-HAM-10 Final Report*
5. *NuStar's Integrity Management Program (IMP)* Figure 3-7.