



U.S. Department
Of Transportation
**Pipeline and
Hazardous Materials
Safety Administration**

820 Bear Tavern Road, Suite 103
West Trenton, NJ 08628
609.989.2171

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED COMPLIANCE ORDER**

OVERNIGHT EXPRESS DELIVERY

December 22, 2014

Richard Fisette
Terminal Manager
IMTT-Bayonne
250 East 22nd Street
Bayonne, NJ 07002

CPF 1-2014-5008

Dear Mr. Fisette:

During a 2013 inspection, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), inquired about the delivery point of a bi-directional pipeline at IMTT-Bayonne. This generated a series of meetings and an analysis into the jurisdictional status of certain tanks and pipeline segments at IMTT-Bayonne, which were not classified as jurisdictional (i.e. subject to minimum federal pipeline safety regulations).

According to IMTT-Bayonne, it had fifty percent ownership of the associated pipeline system from 1995-2004. At that time, IMTT-Bayonne was the terminal operator. In 1997, IMTT-Bayonne installed infrastructure to support bi-directional pipeline operations. Then, in 2004, IMTT-Pipeline became the pipeline operator. In 2013, subsequent to PHMSA's jurisdictional inquiry, IMTT-Bayonne contracted for a jurisdictional analysis.

During a meeting on April 29, 2014, representatives of the PHMSA, OPS, pursuant to Chapter 601 of 49 United States Code, reviewed the preliminary findings of the jurisdictional analysis performed on IMTT-Bayonne tank and pipeline facilities, in Bayonne, New Jersey. At this meeting, IMTT-Bayonne personnel informed the PHMSA representative that it had determined several of its pipeline segments and breakout tanks were jurisdictional.

By June 2014, IMTT-Bayonne requested an Operator Identification Assignment from PHMSA. In that request, IMTT-Bayonne declared that a number of its pipeline segments and breakout tanks are subject to 49 C.F.R. Part 195.

As a result of the information noted above, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are:

1. §195.402 Procedural manual for operations, maintenance, and emergencies.

(a) General. Each operator shall prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies. This manual shall be reviewed at intervals not exceeding 15 months, but at least once each calendar year, and appropriate changes made as necessary to insure that the manual is effective. This manual shall be prepared before initial operations of a pipeline system commence, and appropriate parts shall be kept at locations where operations and maintenance activities are conducted. . . .

IMTT-Bayonne failed to prepare and follow a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies for associated jurisdictional facilities that includes all the provisions annotated in §195.402.

At the time of the April 29, 2014 meeting, IMTT-Bayonne could not demonstrate that it either had or followed procedures required under §195.402. Rather, IMTT-Bayonne made available a PowerPoint presentation that included information on its preliminary jurisdictional analysis results and showed that it did not have or implemented procedures/plans consistent with all applicable federal pipeline safety regulations for its jurisdictional pipeline system.

Subsequent to the April 29th meeting, a PHMSA inspector requested IMTT-Bayonne to provide additional information regarding its jurisdictional pipeline system. In an e-mail dated August 15, 2014, IMTT-Bayonne provided the maximum operating pressure (MOP) of certain pipeline segments and attached a spreadsheet that provided data on certain breakout tanks. They also provided a copy of a status report titled “Compliance Implementation Schedule” dated August 14, 2014, which describes certain compliance actions it plans to take to bring its pipeline facility into compliance with the federal pipeline safety regulations.

2. §195.404 Maps and records.

(a) Each operator shall maintain current maps and records of its pipeline systems that include at least the following information; . . .

(3) The maximum operating pressure of each pipeline.

IMTT-Bayonne failed to maintain detailed records to demonstrate that the MOP of its jurisdictional pipeline segments were determined in accordance with §195.406(a).

Subsequent to the April 29th meeting, a PHMSA inspector requested IMTT-Bayonne to provide additional information regarding its jurisdictional pipeline system. On August 15, 2014, IMTT-Bayonne sent an e-mail to a PHMSA inspector providing a numeric value of its MOP for certain pipeline segments. However, IMTT-Bayonne did not provide any information to validate that the MOP for all jurisdictional pipeline segments were established in accordance with §195.406(a).

3. § 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a) Identify covered tasks;

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

(c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;

(d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an accident as defined in Part 195;

- (e) Evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task;
- (f) Communicate changes that affect covered tasks to individuals performing those covered tasks;
- (g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed;
- (h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities; and
- (i) After December 16, 2004, notify the Administrator or a state agency participating under 49 U.S.C. Chapter 601 if the operator significantly modifies the program after the Administrator or state agency has verified that it complies with this section.

IMTT-Bayonne failed to have and follow a written qualification program.

At the time of the April 29, 2014 meeting, IMTT-Bayonne could not demonstrate that it either had or followed a qualification program required under §195.505. Rather, IMTT-Bayonne made available a PowerPoint presentation that included information on its preliminary jurisdictional analysis results and showed that it did not have or implement procedures/plans consistent with all applicable federal pipeline safety regulations for its jurisdictional pipeline system.

Subsequent to the April 29th meeting, a PHMSA inspector requested IMTT-Bayonne to provide additional information regarding its jurisdictional pipeline system. In an e-mail dated August 15, 2014, IMTT-Bayonne provided the MOP of certain pipeline segments and attached a spreadsheet that provides data on certain breakout tanks. They also provided a copy of a status report titled "Compliance Implementation Schedule" dated August 14, 2014, which describes certain compliance actions it plans to take to bring its pipeline facility into compliance with the federal pipeline safety regulations.

Proposed Compliance Order

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations.

We have reviewed the circumstances and supporting documents involved in this case, and have decided not to propose a civil penalty assessment at this time.

With respect to items 1, 2, and 3 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to IMTT-Bayonne. 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). 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.

Please submit all correspondence in this matter to Byron Coy, PE, Director, PHMSA Eastern Region, 820 Bear Tavern Road, Suite 103, W. Trenton, NJ 08628. Please refer to **CPF 1-2014-5008** on each document you submit and please, whenever possible, provide a signed PDF copy in electronic format. Smaller files may be emailed to Byron.Coy@dot.gov. Larger files should be sent on a CD accompanied by the original paper copy to the Eastern Region Office.

Additionally, if you choose to respond to this (or any other case), please ensure that any response letter pertains solely to one CPF case number.

Sincerely,

Byron Coy, PE
Director, Eastern Region
Pipeline and Hazardous Materials Safety Administration

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

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to IMTT-Bayonne a Compliance Order incorporating the following remedial requirements to ensure the compliance of IMTT-Bayonne with the pipeline safety regulations:

1. With respect to Item Number 1 of the Notice pertaining to IMTT-Bayonne failure to prepare and follow for each pipeline system a manual of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies, IMTT-Bayonne shall complete at a minimum, the following actions:
 - a. Provide a current map of the jurisdictional pipeline system¹ that includes information on the location and identification of all assets within 30 days of issuance of the Final Order.
 - b. Provide current piping and instrumentation diagram(s) showing the jurisdictional components of the pipeline system² within 30 days of issuance of the Final Order.
 - c. Provide an updated “Break-out Tank Listing”³ of all jurisdictional breakout tanks within 30 days of issuance of the Final Order.
 - d. Establish and implement a manual of written procedures that fulfill the requirements of §195.402 in its entirety (e.g. Emergency Response Training Program, Public Awareness Program, Damage Prevention Program, Control Management Procedures, Integrity Management Program, Corrosion Control Procedures, etc.) (OM&E manual) within 180 days of issuance of the Final Order.

2. With respect to Item Number 2 of the Notice pertaining to IMTT-Bayonne failure to maintain detailed records to demonstrate that the maximum operating pressure (MOP) of its jurisdictional pipeline segments were determined in accordance with §195.406(a), IMTT-Bayonne shall:
 - a. Provide records that detail the existing MOP of all jurisdictional pipeline segments that were determined in accordance with §195.406 within 90 days of the issuance of the Final Order.
 - b. For those pipeline segments that do not have detailed MOP records as described above, develop a plan to establish MOP in accordance with §195.406. Within 120 days of issuance of the Final Order, the plan must be submitted to the Region Director for possible modification and approval.

The plan must include the following:

- i. A list of all jurisdictional pipe segments.
- ii. Delineate those segments needing pressure testing from any not needing pressure tests.

¹ See definition in 49 C.F.R. §195.2.

² *Id.*

³ IMTT-Bayonne attached a spreadsheet titled “Break-out Tank Listing” along with an e-mail dated August 15, 2014.

- iii. Pressure tests in accordance with Subpart E in 49 C.F.R. Part 195.
 - iv. Safety measures that should be taken pre- and post- pressure testing.
 - v. Documentation showing completion of any associated repairs identified during the pressure test in accordance with appropriate procedures and federal pipeline safety regulations.
 - vi. Documentation and recordkeeping must be consistent with appropriate regulations in 49 C.F.R. Part 195.
 - vii. Submission of quarterly reports describing all work performed to date and forecasting scheduled work.
 - viii. Plan to detail the sequence of any pressure testing, where higher risk segments are tested before lower risk segments.
 - ix. Actual pressure testing to begin within 180 days of issuance of the Final Order.
 - x. All pressure-testing to be successfully completed and incorporated into records within 720 days of the issuance of the Final Order.
- c. Upon approval from the Region Director, IMTT-Bayonne must execute the plan.
 - d. IMTT-Bayonne must make any and all associated records, and their related procedures, available for review.
3. With respect to Item Number 3 of the Notice pertaining to IMTT-Bayonne failure to have and follow a written qualification program (OQ program), IMTT-Bayonne shall complete at a minimum, the following actions:
- a) Establish and implement an OQ program for all tasks that meet the four-part test in §195.501. The OQ program must be consistent with §195.505. Within 180 days of the issuance of the Final Order:
 - i. Provide a copy of the completed OQ program.
 - ii. Provide a listing of all tasks that are required to be performed by qualified individuals.
 - iii. Provide a listing of all qualified individuals, and the tasks and dates for which they were qualified.
4. All documentation demonstrating compliance with each of the items outlined in this Compliance Order must be submitted to Byron Coy, PE, Director, Eastern Region, PHMSA, Bear Tavern Road, Suite 103, West Trenton, NJ 08628.
5. It is requested (not mandated) that IMTT-Bayonne maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to Byron Coy, PE, Director, Eastern 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.