

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY**

In the Matter of)	
)	
IMTT-Bayonne,)	CPF No. 1-2022-017-NOPV
)	
Respondent.)	
)	

**Response of IMTT-Bayonne
To Notice of Probable Violation, Proposed Civil Penalty,
and Proposed Compliance Order**

International-Matex Tank Terminals Bayonne (IMTT-Bayonne) submits its Response to the Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) issued on July 1, 2022, following an inspection performed by the Office of Pipeline Safety (OPS) in May 2021. On July 14, 2022, the Pipeline and Hazardous Materials Safety Administration (PHMSA) approved an extension of time until September 29, 2022, to respond to the Notice. This response is timely.

IMTT-Bayonne is committed to public safety and operating its facilities in accordance with PHMSA’s regulations. IMTT-Bayonne takes PHMSA’s allegations of violation seriously, however, certain allegations in the Notice are legally and factually unsupported and must be withdrawn. As discussed below, IMTT-Bayonne contests the alleged violations contained in Item 2 and Item 8. IMTT-Bayonne contests Item 13 in part and requests that it be partially withdrawn and that the proposed civil penalty be reduced.

IMTT-Bayonne does not contest the allegations in Item 11 and is submitting under separate cover information that complies with the compliance order proposed for that Item. IMTT-Bayonne does not contest Item 14 and will remit the proposed civil penalty. Item 1, Item 3, Item 4, Item 5, Item 6, Item 7, Item 9, Item 10, and Item 12 are warning items.

Concurrently with this response, IMTT-Bayonne submits a Request for a Hearing, a Preliminary Statement of Issues and Request for Settlement Meeting pursuant to 49 C.F.R. § 190.208(a)(4) and § 190.211,¹ and as permitted under 49 U.S.C. § 60117(b)(1).² IMTT-Bayonne requests a settlement meeting to discuss resolving the contested allegations. IMTT-Bayonne also requests that the presiding official delay scheduling a hearing for 60 days to allow the parties sufficient time to convene a meeting to resolve issues through a settlement.

¹ 49 C.F.R. §§ 190.208, 190.211 (2020).

² 49 U.S.C. § 60117(b)(1) (2018), as amended by The Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. No. 116-260, div. R, title I, § 108(a)(2), 134 Stat. 2221, 2223 (Dec. 27, 2020).

IMTT-Bayonne also notes that on July 1, 2022, PHMSA issued a separate Notice of Probable violation to IMTT-Pipeline in CPF No. 1-2022-016-NOPV. The facilities of IMTT-Bayonne and IMTT-Pipeline have different Operator Identification (OPID) numbers, but are integrally related and are operated by the same personnel using the same procedures. Several allegations in both Notices are the same or similar. To conserve resources, IMTT-Bayonne requests that PHMSA convene a single settlement meeting, and any hearing if necessary, for both Notices so that they can be addressed together.

In addition, Warning Item 3 and Warning Item 12 share the same facts as the allegations contained in Item 2 and Item 12 of the companion Notice issued to IMTT-Pipeline in CPF No. 1-2022-016-NOPV. If either of Item 2 or Item 12 in CPF No. 1-2022-016-NOPV are withdrawn, IMTT-Bayonne requests that the corresponding warning items in this Notice also be withdrawn.

I. Executive Summary

Item 2 § 195.402(a) Procedural manual for operations, maintenance, and emergencies. IMTT-Bayonne contests this alleged violation because the Notice relies on records of inspections conducted in 2017 through 2020 to support a violation of a corrosion control manual that was not adopted until April 2021. The alleged violation is not supported by the evidence and IMTT-Bayonne requests that PHMSA withdraw the allegation and the associated proposed civil penalty.

Item 8 § 195.432(b) Inspection of in-service breakout tanks. IMTT-Bayonne contests this allegation. IMTT-Bayonne has the Work Order forms and the Monthly Breakout Tank records that document the performance of monthly visual inspections of the exterior surfaces for the 115 tanks during the months of February – December 2019. IMTT-Bayonne requests that the allegation and the proposed civil penalty be withdrawn.

Item 13 § 195.573(d) What must I do to monitor external corrosion control? IMTT-Bayonne contests this alleged violation in part. IMTT-Bayonne first notes that the correct number of breakout tanks with cathodic protection used to control corrosion on the bottom of aboveground breakout tanks is 53, not 66. With respect to the 35 breakout tanks with sacrificial galvanic anodes, IMTT-Bayonne acknowledges that it does not have cathodic protection inspection records. For the breakout tanks that are cathodically protected with impressed current systems, IMTT-Bayonne attaches the annual cathodic protection inspection reports for 2019 and 2020. IMTT-Bayonne requests that the alleged violation be withdrawn with respect to the tanks for which it has provided inspection records and that the proposed civil penalty be reduced by a proportionate amount.

II. Response of IMTT-Bayonne

A. Overview of the IMTT-Bayonne Terminal Facilities.

IMTT owns and operates pipeline and terminal facilities in and near Bayonne, New Jersey. These facilities are operated under two OPID numbers. The facilities operated under IMTT-Bayonne OPID 39149 include terminal facilities and related pipeline facilities. Facilities

operated under the IMTT-Pipeline OPID 32162 consist of a 9.6-mile pipeline that transports refined petroleum products and a single aboveground breakout tank storage (Tank # 7640). The facilities of IMTT-Bayonne and IMTT-Pipeline are operated by the same personnel pursuant to the same sets of procedures.

This Notice involves only the facilities that operate under the IMTT-Bayonne OPID. The facilities include 115 breakout tanks that are located across ten terminals, referred to as “Yards.” The tanks store a variety of petroleum products and their dates of construction range from the 1920s to the 2000s. Each tank was constructed in accordance with the American Petroleum Institute (API) standard that applied at the time the tank was built. Some tanks were constructed before API standards were developed.

B. PHMSA Has the Burden of Proving the Alleged Violations.

PHMSA has the burden of proving that IMTT-Bayonne violated the pipeline safety regulations.³ PHMSA has the “‘burden of production,’ *i.e.*, . . . the obligation to come forward with the evidence at different points in the proceeding,” and the “‘burden of persuasion,’ *i.e.*, which party loses if the evidence is closely balanced.”⁴ PHMSA “bears the burden of proof as to all elements of the proposed violation.”⁵ To meet its burden of production, PHMSA must present sufficient evidence to sustain an allegation of violation. Where PHMSA does not produce such evidence, the allegation of violation must be withdrawn.⁶

To meet its burden of persuasion, PHMSA “must prove, by a preponderance of the evidence, that the facts necessary to sustain a probable violation actually occurred.”⁷ This

³ 49 U.S.C. § 60117(b)(1)(F) (2018), as amended by the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020, Pub. L. No. 116-260, div. R, title I, § 108(a)(2), 134 Stat. 2221, 2223 (Dec. 27, 2020). *See* 49 C.F.R. § 190.213(a)(1) (2021). *See, e.g., ExxonMobil Pipeline Co.*, Final Order, CPF No. 4-2017-5027, 2019 WL 3734516, **4, 5 (Apr. 3, 2019) (withdrawing allegation because PHMSA’s evidence did not establish a violation); *Air Prods. & Chems., Inc.*, Final Order, CPF No. 4-2013-1001, 2015 WL 6758819, *3 (Aug. 10, 2015) (withdrawing alleged violation because PHMSA did not produce “any evidence to support its position” and thereby did not meet its burden of proof).

⁴ *Schaffer v. Weast*, 546 U.S. 49, 56 (2005) (quoting *Dir., Office of Workers’ Comp. Programs, Dep’t of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994)); *see also Butte Pipeline Co.*, Final Order, CPF No. 5-2007-5008, 2009 WL 3190794, *1 (Aug. 17, 2009) (“PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”) (internal citation omitted).

⁵ *ANR Pipeline Co.*, Final Order, CPF No. 3-2011-1011, 2012 WL 7177134, *3 (Dec. 31, 2012) (finding that evidence in violation report was insufficient); *see also CITGO Pipeline Co.*, Decision on Reconsideration, CPF No. 4-2007-5010, 2011 WL 7517716, *5 (Dec. 29, 2011) (finding lack of evidence demonstrating all elements of the alleged violation).

⁶ *See, e.g., ExxonMobil*, 2019 WL 3734516 at **4, 5 (ordering withdrawal of allegations where OPS failed to prove that Respondent engaged in conduct that would constitute a violation); *Plains Pipeline, L.P.*, Final Order, CPF No. 4-2009-5009, 2011 WL 1919520, **4, 5 (Mar. 15, 2011) (ordering withdrawal of allegation when limited evidence in the record was not conclusive); *EQT Corp.*, Final Order, CPF No. 1-2006-1006, 2010 WL 2228558, **6, 7 (May 13, 2010) (finding that OPS did not present evidence or analysis proving that Respondent’s actions were inadequate under the regulation); *Bridger Pipeline Co.*, Decision on Reconsideration, CPF No. 5-2007-5003, 2009 WL 2336991, **5, 6 (June 16, 2009) (finding that evidence introduced by PHMSA was insufficient to establish a violation).

⁷ *Alyeska Pipeline Serv. Co.*, Decision on Petition for Reconsideration, CPF No. 5-2005-5023, 2009 WL 5538655, *3 (Dec. 16, 2009) (citing *Butte Pipeline*, 2009 WL 3190794 at *1, n.3; *Schaffer*, 546 U.S. at 56-58).

burden is carried “only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”⁸ A respondent will prevail under this standard not by conclusively proving compliance, but where its rebuttal evidence is more persuasive than the evidence provided by PHMSA.⁹ If “the evidence is closely balanced,” PHMSA has not met its burden of persuasion and the allegation of violation must be withdrawn.¹⁰

C. Response of IMTT-Bayonne.

IMTT-Bayonne contests Item 2, Item 8, and Item 13 and requests that these alleged violations and associated civil penalties be withdrawn.

Item 2 § 195.402(a). PHMSA Has Not Proven That IMTT-Bayonne Violated Its 2021 Corrosion Control Procedures.

Section 195.402(c) requires that an operator prepare and follow a manual of written procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies for each pipeline system.¹¹ One of the required procedures must address “[o]perating, maintaining, and repairing the pipeline system in accordance with . . . subpart H of this part,”¹² *i.e.*, a corrosion control procedure.

The Notice states that PHMSA reviewed IMTT-Bayonne’s records of its most recent atmospheric corrosion monitoring inspections for 13 areas.¹³ The Notice also states that the inspector reviewed section 9.2.2 of IMTT-Bayonne’s corrosion control manual, which, among other things, sets forth procedures for visual inspection of surfaces.¹⁴ The Notice states that, when the inspector inquired “where the required visual inspection descriptions and criteria were located on the associated records, IMTT-Bayonne discussed that the contractor does not utilize the criteria described in its procedures for characterizing the coating and corrosion conditions. Instead, the contractor uses their own criteria, and condition descriptions meeting CM Section 9.2.2 were not present in the records reviewed.”¹⁵

⁸ *Butte Pipeline*, 2009 WL 3190794 at *1 (internal citation omitted).

⁹ *See ANR Pipeline*, 2012 WL 7177134 at *3. *In ANR Pipeline*, PHMSA found that ANR’s “plausible” explanation regarding the discovery of a reportable condition on its pipeline was sufficient to warrant withdrawal of the allegation of violation because the “Violation Report contain[ed] no evidence which would rebut ANR’s argument.” *Id.* *See also City of Richmond, VA*, Final Order, CPF No. 1-2004-0006, 2006 WL 3825337, *4 (Jan. 12, 2006) (stating that the Respondent does not have the burden of proving compliance, rather OPS has the burden of proving the violation).

¹⁰ *Alyeska Pipeline*, 2009 WL 5538655 at *3 (quoting *Schaffer*, 546 U.S. at 56). *Cf. Buckeye Partners, LP*, Final Order, CPF No. 1-2009-5002, 2012 WL 3144486, *7 (May 30, 2012) (where neither party “present[s] sufficient proof to prove its position,” the violation must be withdrawn because PHMSA bears the burden).

¹¹ 49 C.F.R. § 195.402(a).

¹² *Id.* § 195.402(c)(3). Subpart H of Part 195 addresses Corrosion Control. 49 C.F.R. Subpart H.

¹³ OPS reviewed the records for the following areas: 5th Street, Bergen Point, Curries, Interconnects, Packards, Yard 1, Yard 4, Yard 4-A Hill, Yard 4 – Flip, Yard 5, Yard 6, Yard 8, and Yard 9.

¹⁴ Notice at 3.

¹⁵ *Id.*

The Notice alleges that IMTT-Bayonne failed to follow its corrosion control procedures for inspecting its pipelines for atmospheric corrosion in violation of § 195.402(a) and proposes to assess a \$50,100 civil penalty.¹⁶ To support the allegation, the Violation Report includes IMTT-Bayonne's 2021 Corrosion Manual, dated April 1, 2021,¹⁷ and multiple exhibits containing "Inspection Breakout Tank Pipe Lines" reports for the thirteen areas. These reports document the atmospheric corrosion inspections for the pipelines located in these yards. These reports have dates ranging from March 2017 to September 2020, which predate the 2021 Corrosion Manual.¹⁸

IMTT-Bayonne contests this alleged violation. In 2021, IMTT-Bayonne substantially updated and revised the procedures contained in its corrosion control manual.¹⁹ When OPS conducted its inspection in May 2021, the new corrosion control manual had been in effect for little over one month. During the inspection, OPS reviewed atmospheric corrosion control records dated 2017 through 2020 and compared them to procedures contained in a 2021 corrosion control manual that did not exist at the time the inspections were conducted.

PHMSA cannot rely on records of inspections performed in 2017-2020 to establish a violation of a procedure that was not adopted until 2021. PHMSA has not established that IMTT-Bayonne failed to follow its 2021 corrosion control procedures. The alleged violation is not supported by the evidence in the case file. PHMSA has not met its burden of proving a violation of § 195.402(a).²⁰ IMTT-Bayonne requests that PHMSA withdraw the allegation in Item 2 and the associated proposed civil penalty.

Item 8 § 195.432(b). PHMSA Has Not Proven That IMTT-Bayonne Failed to Visually Inspect the Exterior Surfaces of In-Service Breakout Tanks.

Section 195.432(b) requires, among other things, that an operator inspect the physical integrity of in-service atmospheric and low-pressure steel above-ground breakout tanks in accordance with API Standard 653.²¹ The Notice quotes section 6.3.1.3 of API Standard 653 which states in part:

This routine in-service inspection shall include a visual inspection of the tank's exterior surfaces. Evidence of leaks; shell distortions; signs of settlement; corrosion; and condition of the foundation, paint coatings, insulation systems, and appurtenances should be documented for follow-up action by an authorized inspector.²²

¹⁶ Notice at 3, 12.

¹⁷ Violation Report, Exh-A-03.

¹⁸ Violation Report, Exh-A-26 through Exh-A-27.

¹⁹ Violation Report, Exh-A-03.

²⁰ *ExxonMobil*, 2019 WL 3734516 at **4, 5 (ordering withdrawal of allegations where OPS failed to prove that Respondent engaged in conduct that would constitute a violation); *EQT Corp.*, 2010 WL 2228558 at **6, 7 (finding that OPS did not present evidence or analysis proving that Respondent's actions were inadequate under the regulation); *Bridger Pipeline*, 2009 WL 2336991 at **5, 6 (finding that evidence introduced by PHMSA was insufficient to establish a violation).

²¹ Notice at 5.

²² *Id.* citing API Standard 653.

The Notice states that OPS reviewed IMTT-Bayonne’s Monthly Breakout Tank Checklist and Breakout Tank Work Order Records and alleges that the Monthly Breakout Tank Records “failed to include February through December of calendar year 2019.”²³ The Notice alleges that IMTT-Bayonne “failed to inspect all 115 of its steel atmospheric or low-pressure breakout tanks for their routine in-service inspections during February through December 2019,” in violation of § 195.432(b).²⁴ The Notice proposes to assess a \$310,000 civil penalty.²⁵

IMTT-Bayonne contests this allegation as unsupported by evidence.

During 2019, IMTT-Bayonne followed the practice of recording its monthly visual inspections of the exterior surfaces of breakout tanks using both a Monthly Breakout Tank Work Order sheet and a monthly Required Checklist (Monthly Breakout Checklist). Each month, IMTT-Bayonne generated a Work Order sheet for each yard listing all the breakout tanks to be visually inspected in that yard. When inspections for that yard were completed, the Work Order was marked “closed” in IMTT-Bayonne’s Hexagon asset management system.²⁶ Occasionally, an employee would note the word “pass” on a physical copy of the Work Order, but that was not a required practice. The absence of handwritten notations did not mean tanks were not inspected.

As part of the inspection, a companion Monthly Breakout Checklist also was completed and signed by the inspector and a supervisor.²⁷ The Monthly Breakout Checklist recorded the condition of all the tanks located in a specific yard in the aggregate. If any issues were discovered requiring further investigation, the Monthly Breakout Checklist form instructed that the tank number be identified in the “Notes” section. A further work order would then be generated for follow-up investigation and remedial action, if necessary. Taken together, Work Order sheet and Monthly Breakout Checklist for each yard constituted documentation that the exterior surfaces of each tank in each yard had been visually inspected.

The records documenting the visual inspections of the 115 tanks during the months of February through December 2019 are voluminous, so IMTT-Bayonne has attached a representative sample of a closed Work Order form and a Monthly Breakout Checklist for visual inspections of the tanks in Yard 5 during the month of April 2019.²⁸ IMTT-Bayonne will be prepared to review all of the Work Orders and Monthly Breakout Checklists that were created during February – December 2019 at the requested settlement meeting.

IMTT-Bayonne’s Breakout Tank Work Order records and Monthly Breakout Checklists demonstrate that IMTT-Bayonne visually inspected all 115 breakout tanks for the period February – December 2019 and that the Notice is not supported by the evidence. IMTT-

²³ *Id.* at 7.

²⁴ *Id.* at 8.

²⁵ *Id.* at 12.

²⁶ See Monthly Work Order Sheet and Monthly Breakout Tank Checklist for Yard 5 Tanks April 2019. Attached hereto as Attachment 1.

²⁷ *Id.*

²⁸ *Id.*

Bayonne, therefore, requests that PHMSA withdraw the allegation and the proposed civil penalty.²⁹

Item 13 § 195.573(d). IMTT-Bayonne Requests Partial Withdrawal With Respect to Tanks Cathodically Protected by Impressed Current.

Section 195.573(d) requires that an operator “inspect each cathodic protection system used to control corrosion on the bottom of an aboveground breakout tank to ensure that operation and maintenance of the system are in accordance with API RP 651 (incorporated by reference, *see* § 195.3).”³⁰ Section 195.573(d) states that this inspection is not required if an operator notes in its corrosion control procedures “why complying with all or certain operation and maintenance provisions of API RP 651 is not necessary for the safety of the tank.”³¹

The Notice states that, during the inspection, PHMSA requested “records for breakout tanks cathodic protection systems within the scope of the inspection for calendar years 2019 and 2020,” and that IMTT-Bayonne indicated that not all of its tanks have cathodic protection.³² The Notice states that IMTT-Bayonne could not provide any additional information on inspections of 66 breakout tanks with cathodic protection or 49 breakout tanks that do not have cathodic protection.

The Notice alleges that IMTT-Bayonne “failed to inspect each cathodic protection system used to control corrosion on the bottom of its aboveground breakout tanks to ensure that operation and maintenance of the system are in accordance with API RP 651 in 66 instances.”³³ To support this allegation, the Violation Report contains Monthly Breakout Tank Checklists and Monthly Breakout Tank Work Order sheets that document the monthly inspections of the exterior surfaces of IMTT-Bayonne’s tanks for the month of January 2019. The Notice proposes to assess a civil penalty of \$263,000.³⁴ The Notice does not allege any violations with respect to breakout tanks that do not have cathodic protection.

IMTT-Bayonne contests this alleged violation in part. First, the correct number of breakout tanks with cathodic protection used to control corrosion on the bottom of aboveground breakout tanks is 53, not 66. Those 53 tanks, which are located across various terminal yards, consist of 35 breakout tanks whose tank bottoms are cathodically protected with sacrificial galvanic anodes, and 18 breakout tanks that are cathodically protected by impressed current systems.³⁵ IMTT-Bayonne acknowledges that it does not have records of cathodic protection inspections for the 35 breakout tanks protected by sacrificial galvanic anodes. With respect to

²⁹ *ExxonMobil*, 2019 WL 3734516 at **4, 5 (withdrawing allegation because PHMSA’s evidence did not establish a violation); *Butte Pipeline*, 2009 WL 3190794 at *1 (“PHMSA carries the burden of proving the allegations set forth in the Notice, meaning that a violation may be found only if the evidence supporting the allegation outweighs the evidence and reasoning presented by Respondent in its defense.”) (internal citation omitted).

³⁰ 49 C.F.R. § 195.573(d).

³¹ Notice at 10.

³² *Id.* at 10.

³³ *Id.* at 11.

³⁴ *Id.* at 12.

³⁵ During 2019, the number of breakout tanks cathodically protected with impressed current was six. During 2020, IMTT-Bayonne installed impressed current systems on an additional 12 breakout tanks, for a total of 18.

the breakout tanks cathodically protected with impressed current systems, IMTT-Bayonne has attached to this Response the annual cathodic protection inspection reports for 2019 and 2020.³⁶

IMTT-Bayonne has demonstrated that it has inspections records for the 18 breakout tanks whose bottoms are cathodically protected by impressed current systems. IMTT-Bayonne requests that the alleged violation be withdrawn with respect to these 18 tanks and that the proposed civil penalty be reduced to reflect that IMTT-Bayonne was unable to provide cathodic protection inspection records only for the 35 tanks protected by sacrificial galvanic anodes.

D. Response of IMTT-Bayonne to Warning Items 3 and 12.

IMTT-Bayonne acknowledges that PHMSA does not adjudicate warning items.³⁷ IMTT-Bayonne notes, however, that the warning items in Item 3 and Item 12 of the Notice are identical to the allegations in Item 2 and Item 12 in the companion Notice issued to IMTT-Pipeline in CPF No. 1-2022-016-NOPV. The facilities of IMTT-Bayonne and IMTT-Pipeline are integrally connected and are operated by the same personnel pursuant to the same procedures. If PHMSA withdraws any of Item 2 and Item 12 in CPF No. 1-2022-016-NOPV, IMTT-Bayonne requests that the corresponding warning item in this proceeding (Item 3 and Item 12) also be withdrawn.

Item 3 § 195.402(a). Procedural manual for operations, maintenance, and emergencies.

This Item is identical to the violation alleged in Item 2 in CPF No. 1-2022-016-NOPV. Under § 195.402(a) an operator must prepare and follow a manual of written procedures for conducting normal operations and maintenance activities and for handling abnormal operations and emergencies. The operator must review the manual each calendar year at intervals not exceeding 15 months and make any appropriate and necessary changes to ensure that the manual remains effective.³⁸

The Notice states that OPS reviewed the following IMTT-Bayonne manuals:

- Operations, Maintenance and Emergency Manual Version 3, dated May 6, 2019 (2019 OME),
- Operations, Maintenance and Emergency Manual Version 1, dated August 2020 (2020 OME), and
- Facility Response Plan Version 6, dated January 2021 (FRP).

The Notice alleges that Revision Logs to these manuals “failed to indicate that an annual review was conducted, who conducted the annual review, the dates of annual review, and why changes were made,” and could provide no further information.³⁹ The Notice alleges that for

³⁶ “Annual Cathodic Protection Survey of the Fuel Storage Tanks at the IMTT Bayonne, New Jersey Facility,” prepared by MESA Corrosion Control & Integrity (Dec. 28, 2020). “IMTT Bayonne, Bayonne, NJ, Annual CP Inspection – 6 Tanks,” prepared by PCA Engineering (Jan. 2020). Both reports are included in Attachment 2.

³⁷ 49 C.F.R. § 190.205.

³⁸ 49 C.F.R. § 195.402(a).

³⁹ Notice at 4.

calendar years 2019 and 2020, IMTT-Bayonne failed to conduct an annual review of its operations, maintenance, and emergency manuals at intervals not to exceed 15 months in violation of § 195.402(a).⁴⁰

In Item 2 of the Notice issued to IMTT-Pipeline in CPF No. 1-2022-016-NOPV, OPS makes the same allegation with respect to the same manuals. IMTT-Pipeline has contested that allegation as unsupported by the evidence. If PHMSA withdraws the allegation in the companion proceeding involving IMTT-Pipeline, IMTT-Bayonne requests that PHMSA also withdraw this warning item.

Item 12 § 195.555. What are the qualifications for supervisors?

Section 195.555 requires that an operator “require and verify that supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for ensuring compliance.”⁴¹ The Notice asserts that when OPS requested IMTT-Bayonne’s corrosion control supervisor training records for 2019 and 2020, IMTT-Bayonne stated that it had a corrosion control specialist, but not a corrosion control supervisor and provided the specialist’s Transcript from the New Jersey Institute of Technology, CP2-Cathodic Protection Technician NACE Training Certificate and Operator Qualification Report. The Notice states that these records did not demonstrate compliance with the regulatory requirement and alleges that IMTT-Bayonne “failed to require and verify that is [*sic*] supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402(c)(3) for which they are responsible for insuring compliance,” in violation of § 195.555.⁴²

Item 12 of the Notice issued to IMTT-Pipeline in CPF No. 1-2022-016-NOPV, OPS makes the same allegation with respect to the same corrosion control specialist. IMTT-Pipeline has contested that allegation as unsupported by the evidence. If PHMSA withdraws Item 12 in the companion proceeding involving IMTT-Pipeline, IMTT-Bayonne requests that PHMSA also withdraw this warning item.

⁴⁰ *Id.*

⁴¹ 49 C.F.R. § 195.555.

⁴² Notice at 10.

III. CONCLUSION

Based on the foregoing, IMTT-Bayonne requests that PHMSA (1) withdraw Item 2 and Item 8 and their associated proposed civil penalties, (2) partially withdraw Item 13 and reduce the proposed civil penalty; (3) withdraw Item 3 and Item 12 if PHMSA withdraws the same allegations in the corresponding Notice in CPF No. 1-2022-016-NOPV.

Respectfully submitted,

Shaun Revere
Chief Operating Officer
International-Matex Tank Terminals

September 27, 2022