



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

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WARNING LETTER

EXPRESS OVERNIGHT MAIL

July 24, 2013

Mr. Richard Fasette
Terminal Manager
International-Matex Tank Terminal - Pipeline
250 East 22nd Street
Bayonne, NJ 07002

CPF 1-2013-5013W

Dear Mr. Fasette:

On September 11-14, 2012, 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 inspected the International-Matex Tank Terminal – Pipeline (IMTT) Public Awareness Program in Bayonne, New Jersey.

As a result of the inspection, 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. **§195.440 Public awareness.**
 - (a) **Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 195.3).**

IMTT failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.2 Hazard Awareness and Prevention Measures.

Pursuant to API RP 1162 Section 4.2, “[o]perators should provide a very broad overview of potential hazards, their potential consequences, and the measures undertaken by the operator to prevent or mitigate the risks from pipelines. Additionally, operators should provide an overview of their preventative measures to help assure safety and prevent incidents.” The *IMTT-Pipeline Public Awareness Plan* (including materials that were sent to stakeholders) did not contain information on the measures that IMTT undertakes to prevent or mitigate the risks from the pipelines or an overview of their preventative measures to help assure safety and prevent incidents.

2. §195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 195.3).

IMTT failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.3.4 Liaison with Emergency Officials.

Pursuant to API RP 1162 Section 4.3.4, the message content should have “information that describe[s] the ongoing relationship between the operator and local emergency response officials to help prevent incidents and assure preparedness for emergencies.” The *IMTT-Pipeline Public Awareness Plan* (including material sent to the affected public and excavators stakeholders) did not describe an ongoing relationship between the IMTT and local emergency response officials.

3. §195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 195.3).

IMTT failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.5 Damage Prevention.

Pursuant to API RP 1162 Section 4.5, “[b]ecause even relatively minor excavation activities can cause damage to a pipeline or its protective coating or to other buried utility lines, it is important that operators raise the awareness of the need to report any suspected signs of damage.” The *IMTT-Pipeline Public Awareness Plan* (including material sent to the affected public and excavators stakeholders) did not include information to raise the awareness of the need to report any suspected signs of damage.

4. §195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 195.3).

IMTT failed to develop a written continuing public education program that followed the guidance provided in API RP 1162 Section 4.11 Security.

Pursuant to API RP 1162 Section 4.11, “[w]here applicable and in accordance with the national Homeland Security efforts, pipeline operators should communicate an overview pertaining to security of their pipelines and related facilities.” The *IMTT-Pipeline Public Awareness Plan, 3rd Revision: May 2012* (including materials that were sent to stakeholders) did not contain information pertaining to security of IMTT’s pipelines and related facilities.

5. §195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see § 195.3).

IMTT did not implement *Section 6 Message Type and Content for Each Audience* of its written continuing public education program.

Section 6 Message Type and Content for Each Audience of IMTT-Pipeline Public Awareness Program stated that a “third-party vendor currently distributes all public awareness materials in English; the vendor conducts an analysis of the demographics of the area through which IMTT pipeline traverse. . . .” IMTT could not demonstrate that the vendor conducted an analysis.

6. §195.440 Public awareness.

(a) . . .

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

IMTT failed to follow the general program recommendation including baseline and supplemental requirements of API RP 1162 Section 8.4.1 Measure 1—Outreach: Percentage of Each Intended Audience and Reached with Desired Messages.

Pursuant to API RP 1162 Section 8.4.1, “[a] baseline evaluation program should establish a methodology to track the number of individuals or entities reached within an intended audience (e.g., households, excavating companies, local government, and local first responder agencies). Additionally, this measure should estimate the percentage of the stakeholders actually reached within the target geographic region along the pipeline.”

IMTT could not demonstrate that it estimated the percentage of individuals or entities actually reached. IMTT was unable to produce any records that showed that it did estimate the percentage of individuals or entities actually reached.

7. §195.440 Public awareness.

(a) . . .

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

IMTT failed to follow the general program recommendation including baseline and supplemental requirements of API RP 1162 Section 8.4.2 Measure 2—Understandability of the Content of the Message.

Pursuant to API RP 1162 Section 8.4.2, “[t]his measure would assess the percentage of the intended stakeholder audience that understood and retained the key information in the message received.” Also, this section states, “[o]perators should pre-test public awareness materials for their appeal and the messages for their clarity, understandability and retain-ability before they are widely used.”

IMTT could not demonstrate that it assessed the understandability for each stakeholder audience group. In addition, IMTT could not demonstrate that it conducted a pre-test. IMTT was unable to produce any records that showed the aforementioned were done.

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 conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to correct the items identified in this letter. Failure to do so will result in IMTT being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **CPF 1-2013-5013W**. 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).

Sincerely,

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